

Office of Legislative
Auditor General

WILLIE MAYO, CPA, CIA, CICA
AUDITOR GENERAL



500 GRISWOLD STREET
STE. 848; GUARDIAN BLDG.
DETROIT, MICHIGAN 48226
TELEPHONE: (313) 224-0924

December 20, 2012

FINAL REPORT TRANSMITTAL LETTER

Honorable Wayne County Commissioners:

Enclosed is the Office of Legislative Auditor General's final copy of the Office of the Wayne County Treasurer, Review of 2009 and 2010 Stadium Excise Tax, Independent Agreed-Upon Procedures Report. Our report is dated December 3, 2012; DAP No. 2011-57-003. The contents of this final report did not change from the draft report previously issued. The report was accepted by the Audit Committee at its meeting held on December 6, 2012 and formally received by the Wayne County Commission on December 20, 2012.

We are pleased to inform you that officials and staff in the Wayne County Treasurer's Office offered their full and complete cooperation during the review. If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose. Copies of all Office of Legislative Auditor General's final reports can be found on our website: <http://www.waynecounty.com/commission/lagreports.htm>.

Willie Mayo, CPA, CIA, CGAP, CICA
Auditor General

REPORT DISTRIBUTION

Wayne County Treasurer's Office

Honorable Raymond J. Wojtowicz, Wayne County Treasurer
Christa McLellan, Deputy Treasurer – Financial Services

Wayne County Department of Management & Budget

Carla E. Sledge, Chief Financial Officer
Terry L. Hasse, Director, Grants Compliance and Contract Management

Wayne County Executive



**Independent Auditor's Report
County of Wayne, Michigan**

Office of the Wayne County Treasurer

**REVIEW OF 2009 AND 2010
STADIUM EXCISE TAX**

AGREED-UPON PROCEDURES

December 3, 2012

REPORT SUMMARY

Purpose/Objectives

At the request of the Wayne County Treasurer's Office (Treasurer), the Office of Legislative Auditor General (OAG) performed certain agreed-upon procedures to assess taxpayers' compliance with the Stadium Excise Tax (Tourist Tax) for calendar years 2009 and 2010. The agreed-upon procedures are listed in a Memorandum of Understanding between the Wayne County Treasurer and the Office of Legislative Auditor General. The Treasurer is responsible for the proper accounting and reporting of information related to the administration and collection of the Tourist Tax.

The agreed-upon procedures were conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States and applicable Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

What We Found

The specific procedures agreed-upon and performed were designed to assess the following objectives: (1) attempt to identify unregistered taxpayers that are responsible for, but not remitting, the stadium excise tax and ascertain the period of time the business(s) have been operating in the County of Wayne, Michigan; (2) compare gross receipts of excise tax returns remitted by county taxpayers to the Treasurer to receipts reported by county taxpayers on their respective State of Michigan Annual Sales, Use and Withholding Tax (SUT) Returns, noting unusual discrepancies between amounts reported; (3) conduct on-site audits of selected county taxpayers' financial records, and/or automated/manual accounting systems for comparison to amounts reported on the stadium excise tax returns

for accuracy; and, (4) calculate any deficiencies in payment of tax, as well as penalties and interest on the deficiency for taxpayers identified in procedures 1, 2 and 3.

Based on the agreed upon procedures performed, we determined one taxpayer was unregistered and not in compliance with the Tourist Tax laws. We assessed a penalty of 10 percent and calculated that approximately \$20,477 in Tourist Taxes, penalties and interest (TPI) are owed to the Treasurer for the period – April 2008 through September 2012. We provided a separate letter to the County Treasurer detailing our calculation of TPI for the one taxpayer. Treasurer officials stated they would attempt to collect all taxes owed to them.

The procedures performed for this engagement do not constitute an audit, the objective of which is to express an opinion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

The OAG will follow-up with the Treasurer's Office during the next agreed-upon procedures engagement to ascertain the status of any delinquent tax collections.

This report is intended solely for the information and use of the Wayne County Treasurer and the Wayne County Commission and is not intended to be and should not be used by another, other than these specified parties. This restriction is not intended to limit the distribution of the report, which is a matter of public record.

REPORT DETAIL

PURPOSE/OBJECTIVES

As stipulated in a Memorandum of Understanding, the Wayne County Treasurer requested the OAG to perform certain agreed-upon procedures to assess taxpayer compliance with Stadium Excise Tax (Tourist Tax) laws. The specific procedures performed were designed to assess the following objectives:

- (1) Attempt to identify unregistered taxpayers that are responsible for, but not remitting, the stadium excise tax and ascertain the period of time the business(s) have been operating in the County of Wayne, Michigan;
- (2) Compare gross receipts of excise tax returns remitted by county taxpayers to the Treasurer to receipts reported by county taxpayers on their respective State of Michigan Annual Sales, Use and Withholding Tax (SUT) Returns, noting unusual discrepancies between amounts reported;
- (3) Conduct on-site audits of selected county taxpayers' financial records, and/or automated/manual accounting systems for comparison to amounts reported on the stadium excise tax returns for accuracy; and,
- (4) Calculate any deficiencies in payment of tax, as well as penalties and interest on the deficiency for taxpayers identified in procedures 1, 2, and 3.

SCOPE

The scope of this engagement covers the period - January 1, 2009 through December 31, 2010. The fieldwork for this engagement was completed on October 30, 2012. The fieldwork related to this engagement was primarily performed at the taxpayers' location or when taxpayer's financial records were located out of state, the form of communication was through electronic, telephone or parcel correspondence.

This report is an agreed-upon procedures engagement conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States and applicable Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants.

We were not requested to and did not conduct an audit, the objective of which would be the expression of an opinion on the controls over the administration and collections of Stadium Excise Tax. Accordingly, we do not express such an opinion. Had we performed additional

procedures, other matters might have come to our attention that would have been reported to you.

METHODOLOGY

For the period of review, we requested Tourist Tax registration, collections, and other information from the Office of the County Treasurer and certain taxpayer information from the Michigan Department of Treasury (State). We performed procedures using public information to develop a list of taxpayers that may not be in compliance with the Tourist Tax laws. We conducted on-site reviews, interviewed taxpayer officials and/or representatives, and examined and performed analytical procedures using taxpayer financial records to determine if any taxes, penalties, and interest were owed to the Treasurer. We made inquiries to the Treasurer, State, taxpayers, and other officials and performed other procedures as we deemed necessary.

BACKGROUND

The Michigan State Legislature, under Public Act 180 of 1991 permitted, upon voter approval, the county to levy a Tourist Tax on hotels, motels, and car rental agencies operating within the county of Wayne, MI. The purpose of the Tourist Tax was to pay the debt service of bonds issued to fund the stadium complex (Comerica Park and Ford Field) in downtown Detroit.

Funds from the collection of the Tourist Tax can also be used to pay for the administration, collection, and enforcement of the Tourist Tax; and to fund other land development projects located in Wayne County with Tourist Tax collections that exceed the annual administration costs and debt service payments. Interest is due each February 1st and August 1st. The principal and interest payments on these bonds range from \$4.97 million to \$6.97 million annually throughout the amortization period for the stadium bonds. We determined that all bond payments are current as of the date of our report.

In November 1996, Wayne County voters approved the Tourist Tax law, which authorized the county to assess an excise tax to fund part of the new baseball stadium. The tax went into effect January 1, 1997, and is to continue until the revenue is generated to retire the stadium bonds or through 2027, whichever occurs first. The tax is assessed at a rate of one percent on gross receipts from hotels and motels on accommodations of less than thirty days to transient guests, and a rate of two percent on gross receipts from car rentals for less than thirty days.

The Tourist Tax law requires hotels, motels, and car rental agencies located in Wayne County to register with the Treasurer upon opening for business. Under the Tourist Tax law, businesses liable for paying the tax are required to file a monthly return and remit

payment on or before the fifteenth day of each month to the Treasurer's Office on gross receipts received in the preceding month.

Public Act 180 of 1991 gives the Treasurer the authority to assess and enforce interest and penalties. The interest rate that can be charged on unpaid tax or penalties due is limited to one percent above the adjusted prime rate. Penalties can be assessed on any unpaid Tourist Tax due. The penalty is based on the nature of the deficiency, those being: negligence, intentional disregard, and fraud. Penalties range from 10 to 100 percent of the deficiency. The minimum penalty charge is \$10.

Since the inception of the Tourist Tax, the Treasurer has had concerns with enforcing the Tourist Tax law. This concern surfaced when the Treasurer was unable to obtain sales tax data on taxpayers from the State of Michigan (State). State officials stated this information could only be provided to the OAG, which is deputized and currently has a confidentiality agreement in place with the State.

As a result, in April 2001, the Treasurer requested and agreed to pay for an agreed-upon procedure examination performed by the OAG. The Treasurer's Office and the OAG formalized the arrangement on December 4, 2009, in a signed Memorandum of Understanding. In addition, the Treasurer utilizes the Wayne County Department of Corporation Counsel to assist with the legal enforcement of the Tourist Tax law.

AGREED-UPON PROCEDURES PERFORMED

Procedures Performed:

- 1) Attempt to identify unregistered taxpayers that are responsible for, but not remitting, the stadium excise tax. For those identified taxpayers not remitting the tax, ascertain the period of time the businesses have been operating in the County of Wayne, MI.**

Results of Procedures:

We searched local internet directories and cross referenced results with the Treasurer's Tourist Tax registration database for potentially unregistered taxpayers. We contacted businesses that appeared in the directory search, but not on the registration list, to determine if they were operating a taxable business within the County of Wayne, Michigan.

We identified one unregistered taxpayer, a car rental agency that was operating a business in the county and not remitting the excise tax. During our field audit of the car rental agency, an official of their accounting firm stated the business opened in April 2008.

We informed the taxpayer and his representatives about the filing requirements for Wayne County Stadium Excise Tax (SET). The accounting firm official stated that they were not aware of the existence of a Wayne County excise tax. We obtained the required registration forms from the Treasurer's Office and provided the documents to the taxpayer for registration and remittance of the excise tax. A Treasurer's Office official stated that the business recently registered.

From our review of taxpayer's financial records, we assessed a penalty of 10 percent and calculated that approximately \$20,477 in Tourist Taxes, penalties and interest (TPI) are owed to the Treasurer for the period - April 2008 through September 2012.

Procedures Performed:

- 2) Compare gross receipts from stadium excise tax returns remitted by county taxpayers to the Treasurer to receipts reported by county taxpayers on their respective State of Michigan Annual Sales, Use and Withholding Tax (SUT) Returns, noting unusual discrepancies between the amounts reported.**

Results of Procedures:

In accordance with our confidentiality agreement with the Michigan Department of Treasury (State), we requested from the State copies of the SUW returns for taxpayers remitting greater than \$1,500 annually for calendar years 2009 and 2010. This represented 128 of 254 registered businesses for 2009, and 125 of 245 registered businesses for 2010, or approximately 97 percent of combined total excise tax collections in both years.

We compared gross receipts reported to the State to those reported to the Wayne County Treasurer's Office (Treasurer). From this analysis, we evaluated taxpayers based on two criteria: (1) differences greater or less than \$5,000 in over/under payments of taxes to the Treasurer; and (2) taxpayers that had not been selected for examination in the 2007-2008 SET engagement.

Taxpayers for whom we could not determine a reasonable explanation for unusual discrepancies, we performed other procedures, either an on-site audit or formally requesting the SUW returns in an effort to explain the differences. Based on the procedures performed, we judgmentally selected 21 out of 56 taxpayers that met our criterion for examination based on discrepancies for the amounts reported and whether they had been previously audited.

Procedures Performed:

- 3) Conduct on-site audits of selected county taxpayers' financial records, and/or automated/manual accounting systems for comparison to amounts reported on their County Stadium Excise Tax Returns for accuracy.**

Results of Procedures:

For the two-year period, 2009 and 2010, we selected the 21 taxpayers (19 hotels & motels, two (2) car rental agencies) identified in procedure #2, in which to perform an examination of their financial records. Our examinations consisted of obtaining general ledger data and/or sales reports, either on-site at the taxpayers' location, or their representatives' location; or, for taxpayers where financial records were located out of state, the use of electronic communication such as, telephone or parcel correspondence were used. We compared taxpayers' general ledger/financial records to amounts reported to the Treasurer for accuracy. Based on these procedures, we performed an examination of taxpayer records for 15 of the 21 taxpayers. For the remaining six (6) taxpayers, we determined five hotels were no longer in business during our review period; and one hotel that provided their SUW for 2010, had an overpayment of \$2,562 for calendar year 2010 when comparing the amounts remitted to the Treasurer's Office.

In total, of the 15 taxpayers examined, we found that 14 had nominal over/underpayments over the 2 year period and were considered in compliance with the Tourist Tax laws. For the remaining taxpayer, a downtown casino, it had an overpayment of \$9,246 and officials stated they may seek a refund for the overpayment.

Procedures Performed:

- 4) Calculate any deficiencies in payment of tax, as well as penalties and interest on the deficiency for taxpayers identified in procedures 1, 2, and 3.**

Results of Procedures:

For the one unregistered taxpayer, we determined during our on-site examination that the agency opened in April 2008. We analyzed available taxpayer financial data during the on-site examination and calculated a tax liability (i.e., excise tax, penalties and interest due -TPI) based on that data for years 2008, 2009, 2010, 2011 and 2012.

Based on P.A. 180 of 1991, penalties can be assessed on any unpaid Tourist Tax due and is based on the categorized nature of the deficiency: negligence, intentional disregard, and fraud. The calculated penalties due on the amount of tax deficiencies

were based on penalty rates allowed by state law under Michigan Compiled Laws (MCL) section 205.23. The statute allows penalties to be calculated at the greater of:

- \$10 or 10% of the deficiency, for negligence without the intent to defraud; and
- \$25 or 25 percent, due to intentional disregard of the law.
- Based on audit procedures performed, we found no instances of fraud.

We also calculated interest on delinquent taxes and penalties based on interest rates provided in Revenue Administrative Bulletin 2012-4 which was in compliance with Public Act 180 of 1991. Interest was calculated through September 30, 2012.

In total, for the one taxpayer, a local car rental agency, that was not registered and determined not to be in compliance with the Tourist Tax laws, we assessed a penalty of 10 percent and calculated that approximately \$20,477 in Tourist Taxes, interest and penalties are owed to the Treasurer for the period April 2008 through September 2012. We provided officials within the Treasurer's Office detailed TPI calculations for the one taxpayer.

Based on our discussion with the accountant for the taxpayer, they expressed a willingness to pay the amount due and start remitting the excise given the fact they were unaware the Tourist Tax existed.

CONCLUSION

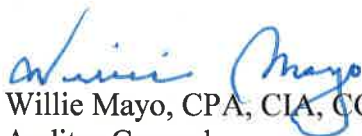
Based on the agreed upon procedures performed, we found one taxpayer that was determined not to be in compliance with the Tourist Tax laws and five businesses that had closed. Over the two year period, 98 percent of an average of 250 registered taxpayers were in compliance the Tourist Tax law. We also calculated that approximately \$20,477 of Tourist Taxes, penalties and interest may be owed to the Treasurer's Office from April 2008 through September 2012.

We provided a separate letter to the County Treasurer detailing our calculation of TPI for the one taxpayer. Treasurer Officials stated they would attempt to collect all taxes owed to them. In addition, Treasurer Officials indicated they will consider adding to their website a link to explain the Tourist Tax law and reporting requirements.

The OAG agrees with their intended actions and will follow-up with the Treasurer's Office during the next agreed upon procedures engagement to ascertain the status of any delinquent tax collections.

On behalf of the OAG, we would like to thank the officials in the Wayne County Treasurer's Office for their cooperation during the engagement.

This report is intended solely for the information and use of the Wayne County Treasurer and the Wayne County Commission and is not intended to be and should not be used by another, other than these specified parties. This restriction is not intended to limit the distribution of the report, which is a matter of public record.



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