

Office of Legislative
Auditor General

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January 22, 2016



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FINAL REPORT TRANSMITTAL LETTER

Honorable Wayne County Commission:

Enclosed is our final copy of the Office of the Wayne County Treasurer, Review of the 2013 and 2014 Stadium Excise Tax, Independent Agreed-Upon Procedures report. Our report is dated December 3, 2015; DAP No. 2015-57-007. The contents of this report did not change from the draft report previously issued. The report was accepted by the Audit Committee at its meeting held on January 13, 2016 and formally received by the Wayne County Commission on January 21, 2016.

We are pleased to inform you officials from the Office of the Wayne County Treasurer, provided their complete and full cooperation during our 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 reports can be found on our website: <http://www.waynecounty.com/commission/743.htm>

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REPORT DISTRIBUTION

Office of the Wayne County Treasurer
Honorable Richard P. Hathaway, Wayne County Treasurer
Christa McLellan, Deputy Treasurer – Financial Services

Department of Management & Budget
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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 2013 AND 2014
STADIUM EXCISE TAX**

AGREED-UPON PROCEDURES

December 3, 2015

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 2013 and 2014. The agreed-upon procedures are listed in a Memorandum of Understanding between the Wayne County Treasurer and the Office of the Legislative Auditor General (OAG). 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 businesses 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 (SUW) 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 from the registered taxpayers in which we conducted on-site reviews and other analytical procedures, we found taxpayers appear to be in compliance with Tourist Tax laws. However, we determined three (3) taxpayers were registered but not in compliance with the Tourist Tax laws. We assessed a penalty of 10 percent and calculated that approximately \$8,050 in Tourist Taxes, penalties and interest (TPI) are owed to the Treasurer for the period – January 2013 through December 2014. We provided a separate letter to the County Treasurer detailing our calculation of TPI for the three (3) taxpayers.

We also determined two (2) taxpayers were unregistered. However, we were unable to determine when these establishments opened for business. In addition, one (1) hotel changed ownership and the OAG was unable to obtain tax information for years 2013 and 2014, in order to reconcile their records to the Treasurer's. Therefore, we will include these three (3) hotels on the next audit schedule.

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.

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(es) 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 (SUW) 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, 2013 through December 31, 2014. The fieldwork for this engagement was significantly completed on December 3, 2015. The fieldwork related to this engagement was primarily performed at taxpayers' location or for taxpayers where financial records were located out of state, 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 registrations, 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 ascertain 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 of the County Treasurer, State Treasury, 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.

In November 1996, Wayne County voters approved the Tourist Tax law (Enrolled Ordinance No. 96-471), 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 sufficient 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 stadium excise tax collections are recorded in the stadium and land development fund.

FINANCIAL ACTIVITY

Funds from the collection of the Tourist Tax can be used to pay for the administration, collection, enforcement of the Tourist Tax, and debt service payments. Excess tax collections after the annual administration costs and debt service payments can be used to fund other land development projects located in

Wayne County. Principal and interest is due each October 1st and April 1st. The 2013 bond interest only payment was \$1.5 million; and the 2014 annual principal and interest payment on the bonds was \$6.0 million, as reported in the Detroit/Wayne County Stadium Authority debt service schedule for the series 2012 bonds.

According to M&B management, the interest only payment in 2013 was due to the bonds' refinancing in 2012.

In September 2012, the Stadium Authority issued Series 2012 Refunding Stadium Authority Revenue bonds for the purpose of advance refunding of the Series 1997 bonds dated March 1, 1997. As reported in the financial statements, the advance refunding will reduce the Authority's total debt service payments over the next 15 years by almost \$8.2 million. The Series 2012 bonds are payable through 2026.

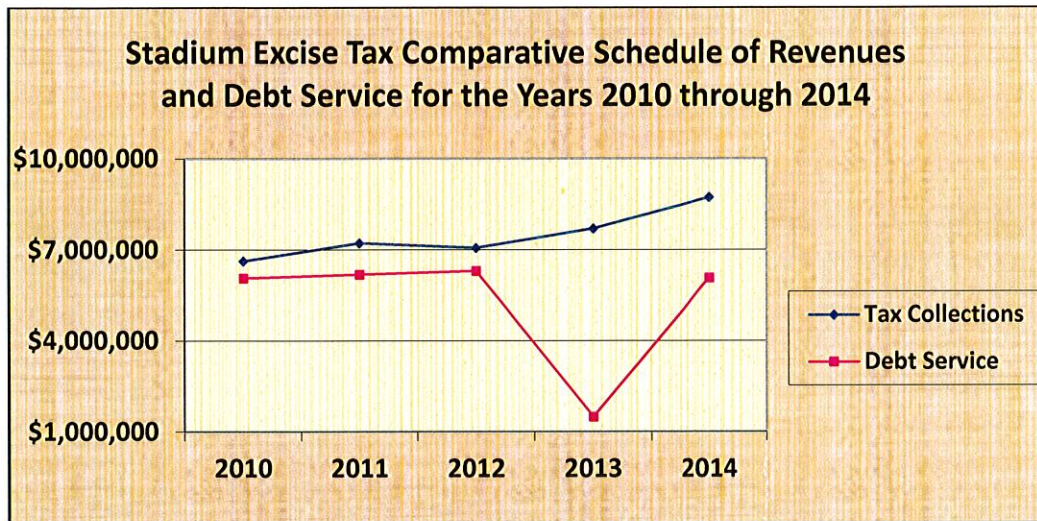
The following table lists the total number of taxpayers and excise tax collections over a five year period.

Tax Collections Schedule
For Calendar Years 2010 to 2014

Calendar Year	Total Registered Taxpayers Per Year	Total Tax Collections
2010	245	\$ 6,636,291
2011	256	\$ 7,221,619
2012	261	\$ 7,606,223
2013	247	\$ 7,698,685
2014	243	\$ 8,724,098
Total	1,252	\$ 37,886,916
Average	250	\$ 7,577,383

Source: WCTO Tax Collection Schedules

A graph illustrating the total amount of excise tax collections over a five (5) year period in comparison to annual debt service payments is shown below:



COMPLIANCE WITH PUBLIC ACT 180 of 1991

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 current arrangement on November 7, 2012, in a signed Memorandum of Understanding to audit tax years 2009 through 2014. 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 a convention bureau booklet and cross referenced results with the Treasurer's Tourist Tax list of taxpayers remitting the excise tax in calendar year 2013 and 2014 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 during our period of review.

Based on the procedures performed and correspondence with the Treasurer's Office, we identified two (2) unregistered taxpayers for the hotels, motels that were operating a business in the county and not remitting the excise tax during 2013 and 2014. The OAG obtained contact information for the motel's and forwarded to them the required registration forms from the Treasurer's Office and provided the documents to the taxpayers for registration and remittance of the excise tax. Also, we were unable to determine when these establishments were opened for business. In addition, one (1) hotel remitted excise tax payments to the Treasurer's Office and changed ownership during our scope period. The OAG was unable to obtain tax records for years 2013 and 2014 from this taxpayer, in order to reconcile their financial records with excise tax payments recorded by the Treasurer. Therefore, we will include these hotels, motels on the next audit schedule.

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 (SUW) 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 the excise tax to the WCTO, that are greater than \$1,500, for calendar years 2013 and 2014. This represented 155 of 247 registered businesses

for 2013, and 155 of 243 registered businesses for 2014, or approximately 99 percent of the total excise tax collections remitted to the WCTO for both years 2013 and 2014.

During the 2011 and 2012 Stadium Excise Tax engagement, the State requested that we establish a new Memorandum of Understanding (MOU) on file with them as part of their new guidelines.

Upon receipt of the State tax information for 2013 and 2014, we compared gross receipts reported to the State to those reported to the WCTO (Treasurer). From this analysis, we evaluated taxpayers based on two criteria: (1) differences greater than or equal to \$5,000 in over/under payments of taxes to the Treasurer; and, (2) taxpayers that had not been selected for examination in the 2011-2012 SET engagement.

There were 59 taxpayers (51 hotels and motels and eight (8) car rental agencies) selected for 2014 for which we could not determine a reasonable explanation for the unusual discrepancies between the Treasurer excise tax payment records and the taxpayers' SUW returns. From these 59 taxpayers, we judgmentally selected 20 out of 59 taxpayers, or 34%, for an on-site examination.

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, 2013 and 2014, we selected the 20 taxpayers (18 hotels & motels, and 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, through electronic, telephone or parcel correspondence. 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 20 taxpayers. For the 20 taxpayers examined, we found that seven (7) had nominal over/underpayments over the 2 year period. Four (4) had nominal over/under payments and were considered to be in compliance with the Tourist Tax laws. Three (3) had under payments and were not considered to be in compliance. The remaining 13 taxpayers were determined to be in compliance with the Tourist Tax laws without any noted over/underpayments.

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:

Based on the procedures performed in steps 1-3, we determined there are two (2) unregistered taxpayers that will be reviewed in the next audit schedule. In addition, we determined, from our on-site examination of 20 taxpayers' books and records, 13 had no over/under payment of taxes and were considered in compliance with remitting the excise tax to the County Treasurer. Two (2) had nominal over payments and two (2) had nominal under payments and were considered to be in compliance. Three (3) had under payments and were not considered to be in compliance. The OAG calculated penalties and interest for these taxpayers.

For the three (3) registered taxpayers with under payments, 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 2013 and 2014.

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 2015-21 which was in compliance with Public Act 180 of 1991. Interest was calculated through December 2014.

In total, for the three (3) taxpayers, they were registered and determined not to be in compliance with the Tourist Tax laws, we assessed a penalty of 10 percent and calculated that approximately \$8,050 in Tourist Taxes, interest and penalties are owed to the Treasurer for the period January 2013 through December 2014. We provided officials within the Treasurer's Office detailed TPI calculations for the three (3) taxpayers.

CONCLUSION

Based on the agreed upon procedures performed, we found seven (7) taxpayers had over/under payments over a 2 year period. Four (4) had nominal over/under payments and were considered in compliance with Tourist Tax laws. Three (3) taxpayers had underpayments and were not considered to be compliance. Over the two year period, 99 percent of an average of 245 registered taxpayers was in compliance the Tourist Tax law. We also calculated that approximately \$8,050 of Tourist Taxes, penalties and interest may be owed to the Treasurer's Office from January 2013 through December 2014.

We have provided a separate letter to the County Treasurer detailing our calculation of TPI for the three (3) taxpayers.

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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