December 2013

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DEPARTMENT OF PARKS, RECREATION, & FORESTRY
AUDIT OF CASH HANDLING AND COLLECTION
JANUARY 1, 2013 – JUNE 30, 2013

STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202

December 2013

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of cash collections and handling by the Department of Parks, Recreation and Forestry (Parks) during the period January 1, 2013 to June 30, 2013.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Our objectives were to (1) determine that cash receipts were properly recorded; (2) review Parks policies and procedures; (3) evaluate compliance with relevant contracts, regulations, and laws; and (4) review implementation of prior recommendations in our March 2005 report[1]. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Parks informed us in their management representations of suspected fraudulent actions by an employee. This matter is currently under investigation by the Erie County Sheriff's Office (Sheriff's Office).

[1] Erie County Department of Parks, Recreation and Forestry Review of Cash Collections For the Period March 1, 2004 – June 30, 2004 issued in March 2005

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BACKGROUND

Parks charges fees, established by the Erie County Legislature, for use of its facilities including golf fees, golf cart rental, golf club rental, shelter rentals and camping fees. Golf fees are generated by annual passes, cash, and credit card sales. Because there is a $3 surcharge imposed on golfers using credit cards by the processing bank, additional cash sales take place in lieu of being subjected to the credit card surcharge. Parks also receives payments for special events held at its facilities, contracts for sales of concessions at its facilities, the sale of maple syrup, and reimbursement from New York State (NYS) for snowmobile trail maintenance and reforestation. For the six-month period January 1, 2013 to June 30, 2013 Parks reported revenue of approximately $780,000.

Parks collects cash receipts at its Rath Building office (shelter and camping fees), Sprague Brook (same day camping fees), and the two golf courses (season passes, greens fees, golf cart rentals, and golf club rentals). Reimbursements from NYS and online sales are collected and recorded at the Rath Building office.

Grover Cleveland, the original site of the Country Club of Buffalo, is one of the area's oldest golf courses. The course hosted the 1912 US Open Golf Tournament. Erie County acquired the 112-acre park, including the 18-hole 5,621-yard golf course from the City of Buffalo in 1986 for one dollar. Approximately 52,000 rounds of golf are played on this par 69 course annually.

Elma Meadows is home to the County's second golf course. Located in the Town of Elma, the 220-acre park was acquired by Erie County in 1957. The 18-hole par 72 course is a 6,316 yard course and received a 3 ½ star rating by Golf Digest. An average of 55,000 rounds are played on the course annually. In addition to the golf course, Elma Meadows features a picnic grove, a passive recreation area, and six shelters available for rent.

Sprague Brook Park, consisting of 974-acres located in the Hamlet of Glenwood, is the only County Park to allow overnight camping. The park consists of 123 campsites (thirty electric and ninety-three non-electric), seven shelters, and a casino all available for public rental.

Akron Falls, Chestnut Ridge, Como Lake, Ellicott Creek, Emery, Isleview, and Wendt Beach also have shelters, gazebos, casinos, and other buildings available for public rental.

AUDIT FINDINGS

I. Sales Tax on Customer Rentals

Comptroller's office discovered that Parks has not charged New York State Sales Tax (Sales Tax) for Grover Cleveland Golf Course since 1986 or Elma Meadows Golf Course since 1957 for golf cart, golf club, or range ball rentals. Because Sales Tax has never been charged by Parks for these types of rentals, we sought the opinion of the Erie County Attorney (County Attorney) to determine whether this practice was proper. The County Attorney advised that under N.Y. Sales Tax Law Sec. 1105(a) *the receipts from every retail sale of tangible personal property is subject to sales tax.* N.Y. Tax Law Sec. 1101(b)(6) further defines a sale as including *the transfer of possession and rentals of tangible personal property.* Per the County Attorney the rentals of golf carts, golf clubs, and range balls are subject to New York State Sales Tax. For more information about the County Attorney's recommendation please see the Addendum.

As this is a legal matter, the Comptroller's office defers opinion to the County Attorney. In accordance with their opinion stated in the Addendum, the **RECOMMENDATION** is that Parks work with the Comptroller's Office to establish procedures to collect and remit sales tax from customers' rentals of golf carts, golf clubs, and range balls commencing with the 2014 season. The taxes not collected during the six month period of this audit total $7,347 for the two courses in question. Per the recommendation to collect this tax, the Comptroller's office **RECOMMENDS** that the cash registers and current policies and procedures be updated to reflect the collection of sales tax on customer rentals.

II. Cash Handling at the Rath Building and Sprague Brook

Cash and checks received at the Rath Building from permits, shelter, and campsite reservations, and those received from Sprague Brook for shelter and campsite reservations do not have adequate procedures in place. The process does not have sufficient oversight to properly mitigate the risk of theft. The current procedures have the Rath Building receptionists maintaining a listing of receipts from various sources; However Sprague Brook is not maintaining a log of deposits sent to the Rath Building for comparison and reconciliation. A potential for theft is inherent in not tracking deposits sent, received, and then checked against the bank statement. Additionally, there are no procedures regarding restrictive endorsement of checks upon receipt or the frequency of deposits. The lack of procedures consistent with good business practice increases the risk that cash and checks are not adequately safeguarded against misappropriation, misuse, loss, and theft.

WE RECOMMEND that Parks implement a policy to include the preparation of a combined daily log of cash and checks received by the Rath Building receptionists, and a log of receipts sent to the Rath Building for deposit to be kept at Sprague Brook, to be compared to the bank deposit as a control to prevent theft.

Parks has contacted the Comptroller's Office to obtain a copy of their daily receipt log and they are currently in the process of designing a log to reflect the needs of the Parks operations.

WE ALSO RECOMMEND that a stamp with a restrictive endorsement should be provided to each location where checks are received and each check should be stamped upon receipt. Without a stamp on each check, it is possible for theft of the checks and potential loss of County revenue.

Parks management has informed us that they have ordered restrictive endorsement stamps for all locations and that once received, the stamps will be forwarded together with procedures detailing how they should be used.

Additionally **WE RECOMMEND** that deposits be prepared and taken to the bank more frequently, especially during the spring and summer months when activity is the highest. During the remainder of the year deposits should be made when cash on hand exceeds a pre-determined amount or at least weekly.

Parks informed us that they will implement a policy requiring deposits to be made weekly and/or when receipts on hand total $500.

III. Maple Syrup Inventory

In 2010 Erie County renovated and re-opened the Sugar Shack in the Erie County Forest. This facility collects sap from maple trees on the premises and processes it into maple syrup for retail sale. This county made syrup is sold at the Sugar Shack, the Rath Building, and special events, as an additional source of revenue for the County as well as acting as an opportunity for educational enrichment by holding tours for people to see the process.

During our audit of this area we determined there is no formal inventory of bottled syrup. The inventory is counted after production and bottling, but there is no report of the beginning inventory, new annual production, sales, spoilage, giveaways, and ending inventory. The amount of syrup produced in 2013 was 185 gallons and at the time of the audit there were 330 gallons on hand, however there was not tracking of 2013 starting inventory before production, sales, spoiled inventory, given away inventory over the audit period. Lack of a formal inventory creates the risk that product could be stolen or sales misstated to cover loss or theft of receipts.

WE RECOMMEND that a procedure be created and implemented to track the beginning balance, additions, deletions, and ending balance of the inventory. Additions and deletions should be documented as to what is produced or returned, and what is sold or removed for other reasons with a description and date for each adjustment. An individual not responsible for maintaining the inventory log should perform a periodic inventory count. This should be compared to the inventory record and any discrepancy investigated immediately.

Because of our audit, Parks has prepared new procedures regarding the maple syrup inventory. Beginning in 2014 a Maple Syrup master inventory sheet will be kept which will track the beginning inventory of syrup sorted by bottle size, additions will be made based on production. Adjustments will also be made based on sales figures from both the Rath Building and the Forestry, as well as any spoilage with takes place in the inventory.

PREVIOUS RECOMMENDATIONS

The March 2005 Comptroller's Office report recommended that Parks:

- Correct software problems at the Grover Cleveland Golf Course.
- Develop written policies and procedures for use at all County golf courses.
- Remove cashiers ability to process a void/return transaction at the golf courses.
- Print out the computer systems daily void/return report and have it reviewed by a supervisor.
- Retain system receipts that golfers present to course starters to obtain access to the course as well as receipt documentation for golf cart rentals.
- Revise the computerized software system at the golf courses to eliminate multiple returns of a single cash receipt transaction, cashier produced non-season pass zero dollar sale transactions, cashier produced interim shift cash out reports (Reports), paid out transaction capacity, skips in the consecutive numbering of receipt transactions as a result of a cashier switching computer screens prior to completing a transaction.
- Ensure reimbursement claims for State aid are filed on a timely basis.
- Close two bank accounts used for senior citizens recreation and special event activities.
- Prepare formal written departmental policies and procedures for the safeguarding, recording and reporting of event cash receipts.

Recommendations from our March 2005 report have all been addressed.

AUDITOR'S COMMENTS

I. Golf Course Computerized Deposit Reports

Deposits are manually calculated from the computerized End of Day Z-Report at the golf courses on occasion. There are certain payment method issues that result in the Interim Shift Cash Out X-Report and End of Day Z-Reports being incorrect. When these occur the supervisor has to add together the credit card receipts to come up with the correct credit card total for the day, and then subtract this total from the sales total to get the correct bank deposit

control total. The computerized cash registers do not allow split payments or a change of payment methods. When these items occur the sales clerk has no way to enter the correct payment method in the computer.

WE RECOMMEND that Parks research if this can be corrected in a cost effective manner in the POS Chelsea Revenue Tracking system (Chelsea). **WE ALSO RECOMMEND** that if Chelsea cannot be modified to allow split payments and change of payment method; the clerk prepare an exception report explaining which customer payment needs to be corrected and why. The exception report should be kept with the daily reports to explain the correct bank deposit amount.

Parks management informed us that they are researching possible adjustments to Chelsea and that they are in the process of designing and implementing an exception report to address end of shift and end of day adjustments.

II. Employee Access to Cash Deposits

All employees that have cashier responsibilities have access to the safes at Grover Cleveland and Elma Meadows Golf Courses and at Sprague Brook. Because of the ease of access to cash, the potential for theft and financial loss to the county is amplified, and due to the volume of employees with access it would be very difficult to track down any perpetrators of theft.

WE RECOMMEND that Parks limit the number of employees that have access to the safes or consider purchasing drop safes at Elma Meadows Golf Course, Grover Cleveland Golf Course, and Sprague Brook for employees to drop cash receipts and allow a select group retrieval access to those safes.

III. Reducing Risk

At a meeting prior to the receipt of the Management Representation Letter, we were informed by Parks of the arrest of a part-time seasonal golf course employee due to suspected fraudulent actions. Parks received an email tip from a customer stating that she had received a hand written receipt rather than the normal cash register receipt. They conducted an internal investigation which evidenced that the Parks workers were out of compliance with their own policies and procedures in place to prevent theft, and subsequently contacted the Sheriff's Office. The employee admitted to stealing about $1,000 and was arrested by the Sheriff's Office. Parks and the Sheriff's Office are continuing their investigation to determine if additional money was taken or if other employees were involved.

The Parks policy designed to prevent this type of theft requires that the starter verify the golfer's receipt prior to starting them on the golf course. Compliance with this policy may have prevented this theft from occurring. We observed transactions and spoke with personnel regarding the policies at both golf courses during the course of our fieldwork. Based on those observations and discussions with personnel we determined that this policy was being followed

at that time. During the course of our fieldwork we noted lax adherence to policy, as there were times the starter was not available to take the receipts due to other duties. These duties include gathering balls from the putting green and addressing golfer issues. When the starter is not available, golfers either wait for him to return or leave their starter receipts on the counter for him. On his return he notes any golfers on the course and makes sure that he has receipts for them. The Parks Commissioner is reviewing present policies and procedures to determine what additional processes can be implemented to reduce the likelihood of future theft.

WE RECOMMEND that Parks implement additional controls over cash receipts such as:

1. Rotating schedules to ensure that cashiers are not always working with the same starter to help reduce the possibility of collusion.

2. Placing signs at the cashier's station and the starter's booth stating that customers should receive two cash register generated receipts. This sign should advise the customer to call the Commissioner of Parks if they do not. Parks has informed us that they have already posted such signs at the golf courses.

3. Consider having the starter booth manned at all times during peak season. Duties that take the starter away from the booth could be assigned to other employees. Coverage for breaks and lunch could also be provided.

4. Performing random checks of golfer's receipts while they are on the golf course.

In order to reduce or eliminate the credit card surcharge or interchange fee, **WE ALSO RECOMMEND** that Parks contact the Comptroller's Office to investigate other credit card processing options that are available as a result of the Erie County Banking Services 2013 Request for Proposals due December 20, 2013.

RESULTS OF EXIT CONFERENCE

An exit conference was held on October 30, 2013 with the Commissioner of Parks and a representative from Budget and Management. The contents of the report were discussed and Parks was in general agreement with our findings, auditor's comments and recommendations.

In accordance with the County's Audit Response System and Procedures, we request that Parks prepare a written response to the County Executive concerning the findings and recommendations by January 3, 2013. We further request that the County Executive forward copies of the written response to the Comptroller's Office, the Erie County Legislature and the Erie County Fiscal Stability Authority by January 17, 2014.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Mark C. Poloncarz, County Executive
Troy P. Schinzel, Commissioner of Parks and Recreation
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority

ADDENDUM:

Correspondence between the Comptroller's Office and the County Attorney.

COMPTROLLER'S
RECEIVED
13 OCT -8 AM 11:33

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 8, 2013

VIA HAND DELIVERY ONLY
Stefan I. Mychajliw, Erie County Comptroller
Erie County Comptroller's Office
95 Franklin Street, 11th Floor
Buffalo, New York 14202

RE: Legal Opinion Requested by the Comptroller – Are Golf Cart Rentals and Other Miscellaneous Items sold by the County Subject to Sales Tax?

Dear Comptroller Mychajliw:

Your office has requested an opinion on the issue of whether "golf cart rentals at the two Erie County owned golf courses are subject to sales tax". You have also inquired as to whether or not other miscellaneous items sold by the County, such as maple syrup, are subject to sales tax.

Under New York Tax Law, the rental of golf carts, pull carts, golf clubs, range balls and other similar tangible property is treated as a retail sale subject to sales tax even though the County is the seller.

Unless otherwise provided under the tax law, the receipts from every retail sale of tangible personal property is subject to sales tax. *N.Y. Tax Law Sec. 1105(a)*. A sale includes the transfer of possession and rentals of tangible personal property. *N.Y. Tax Law Sec. 1101(b)(5)*. Tangible personal property is corporeal real property of any nature. *N.Y. Tax Law Sec. 1101(b)(6)*. The rental of golf carts, pull carts, golf clubs, range balls and similar items are retail sales of tangible personal property generally subject to sales tax. Greens fees and reservation fees are not subject to sales tax since they are charges for participatory sport activity, and are specifically excluded from sales tax.

Generally, any sales made by a political subdivision of New York State are not subject to sales and use taxes; provided, however, that "[the political subdivision] is a vendor of services or property of a kind not ordinarily sold by private persons." N.Y. Tax Law Sec. 1116(a)(1). Because golf carts, pull carts, range balls and golf clubs are ordinarily rented or sold by private persons, the exemption from collecting sales tax would not apply to a political subdivision of the state, like the County, that rents out golf carts and other items.

95 FRANKLIN STREET – ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE (716) 858-2200 – FAX (716) 858-2281 (NOT FOR SERVICE)
WWW.ERIE.GOV

The sale of maple syrup by the County of Erie is not subject to sales tax. Most food is exempt from sales tax. To be exempt, certain conditions must be met. Namely, 1) the food must be sold for human consumption; 2) it must be sold unheated; and 3) it must be sold in the same form and condition, quantities, and packaging as is commonly used by retail food stores. *See New York State Department of Taxation and Finance, Tax Bulletin ST-525 (April 13, 2011)*. Tax Bulletin ST-525 specifically lists "syrups" as an exempt food for sales tax purposes. *Id.*

It is my understanding that the County of Erie has never, under any administration, collected sales tax on the rental of the items mentioned above, despite being required to do so. Accordingly, all necessary action should be taken by the County of Erie to begin collecting sales tax on the rental of such items.

Please feel free to contact me with any questions.

Very truly yours,

Michael A. Siragusa
Erie County Attorney

COUNTY OF ERIE

STEFAN I. MYCHAJLIW
COMPTROLLER

August 27, 2013

Mr. Michael A. Siragusa, Esq.
County Attorney – Department of Law
95 Franklin Street – Rm 1634
Buffalo, NY 14204

Subject: Sales tax on golf cart rentals

Dear Mr. Siragusa:

Our office is currently conducting an audit of cash collections and handling in the Parks, Recreation, and Forestry Department (Parks).

As part of our audit we are trying to determine if golf cart rentals at the two Erie County owned golf courses are subject to sales tax. During our research into the matter we looked at Tax Bulletin ST-700 and Advisory Opinion TSB-A-06(15)S which seem to indicate that the rentals might be taxable. We have heard other indications, mostly from personal experiences that suggest the rentals are not taxable or that Erie County is exempt from charging the sales tax. Further, would miscellaneous sales such as for maple syrup be subject to sales tax or, again would this be exempt?

Will you please give us a legal opinion to clarify if the golf cart rentals and other miscellaneous items sold by the County are subject to NYS sales tax?

If you have any questions or require clarification please contact David Kinda.

Thank you for your assistance in this matter.

Sincerely,

Teresa Fraas
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716-858-8430