

Western Regional Off-Track Betting Corporation

Oversight of Take-Home Vehicles

SEPTEMBER 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Western Regional Off-Track Betting Corporation

Audit Objective

Determine whether the Western Regional Off-Track Betting Corporation (Corporation) Board of Directors (Board) provided adequate oversight of take-home vehicles.

Key Findings

The Board did not provide adequate oversight of take-home vehicles. We found:

- All employees that were assigned a take-home vehicle, except for the CEO, maintained mileage logs and reimbursed the Corporation for personal use of its vehicle in a timely manner.
- The CEO did not reimburse the Corporation for his personal use of the Corporation's vehicle until the internal auditor found he was not adhering to the take-home vehicle policy. The internal auditor estimated the CEO's personal mileage and found the CEO owed the Corporation \$3,484 for the period July 2016 through April 2019. The CEO paid this reimbursement in April 2019.
- The CEO failed to comply with the Board's take-home vehicle policy, therefore he did not demonstrate appropriate "tone at the top," which is essential to establish strong internal controls.

Key Recommendations

- Ensure all employees assigned take-home vehicles complete and file accurate weekly mileage logs as required.
- Ensure all employees assigned a take-home vehicle timely reimburse the Corporation.

Corporation officials generally agreed with our recommendations and indicated they planned to initiate or have already initiated corrective action.

Background

The Corporation was formed as a public benefit corporation in 1973, owned by 15 participating counties and the Cities of Buffalo and Rochester. The Board has 17 members, one from each of the 15 participating counties and the two participating cities, appointed by each municipality's governing board. The Board is responsible for the Corporation's financial and operational affairs, including establishing policies and monitoring compliance.

The Corporation offers off-track pari-mutuel wagering on horse racing at Batavia Downs Gaming and through the branch locations, electronic betting locations, telephone wagering, and online wagering. Revenues from these operations are to be distributed to the participating municipalities. The Corporation owns and operates Batavia Downs Gaming, which conducts live harness racing and simulcasts to and from other racetrack facilities as well as video gaming, restaurant, and event facilities.

Quick Facts

Current Branch Locations	11
Electronic Betting Locations	26
Individuals Assigned Take-Home Vehicles During the Audit Period	7
Personal Mileage Claimed January 2016 through September 2019	44,100

Audit Period

January 1, 2016 – April 20, 2020

Oversight of Take-Home Vehicles

The Board-appointed President and Chief Executive Officer/General Counsel (CEO) is responsible for the supervision of Corporation officers and administrative duties. As part of his duties, the CEO travels within the 15 counties of operation to supervise, meet with branch employees, inspect facilities and promote the Corporation, among other travel requirements. Operation managers and technicians also travel to branch locations to help ensure operational efficiency and facility maintenance. The Corporation has a fleet of vehicles used by management and employees to travel between facilities, including take-home vehicles.

How Should a Board Provide Oversight of Take-Home Vehicles?

A board is responsible for establishing a comprehensive written policy for take-home vehicles. The policy should restrict use of vehicles to employees and for business purposes only and should include requirements for officials to document daily mileage and the reason for travel. The policy should include requiring supervisory review and approval of the mileage, and a process for reconciliation to the vehicle's odometer readings. The policy should also specify how officials are to reimburse if a vehicle is operated for personal use. The board and management should strictly adhere to all policies to create a positive control environment or "tone at the top."

The Board adopted a motor vehicle use policy (the policy) in October 2016 which includes the general rules and requirements for vehicles in the Corporation's fleet, including those specific to take-home vehicles. The policy lists the Corporation officials and employees who are assigned take-home vehicles. These include:

- CEO,
- Special Advisor to the CEO,
- Director of Branch Operations,
- Manager of Branch Operations,
- Auditor and Simulcast Technician.

The policy states that take-home vehicles may be "driven by another so designated by the assigned driver provided there is a reasonable basis" and "may be used at the pleasure of the person to whom assigned within the State of New York." It also requires individuals assigned take-home vehicles to reimburse the Corporation \$260 annually, or \$10 biweekly, through payroll deductions. In addition, it requires these individuals to reimburse "the Corporation for the cost of gasoline incurred by the Corporation which are attributable to an employee's personal use of the vehicle." The policy requires this reimbursement to be made "monthly at a rate per mile certified by the Chief Operating Officer as the overall

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cost per mile.” The Corporation’s Chief Financial Officer (CFO) told us the rate is based on the cost of fuel purchases in the previous month.

In addition to the policy, Corporation officials established a written vehicle mileage and fuel records procedure (the procedure) in October 2016, expanding on the requirements outlined in the policy. The procedure requires officials to record their daily mileage and fuel usage using a “vehicle mileage and fuel record” form (the mileage log). According to the procedure, the mileage log is to be completed weekly and reviewed and initialed by the official’s or employee’s supervisor. The mileage log includes the date, daily odometer readings (beginning and end of day), odometer readings at fueling, information on each fuel/oil purchase, and maintenance and repair records. At the end of each week, the official or employee is to submit the mileage log after it is reviewed and initialed by their supervisor, along with all receipts, to the CEO’s office. The Corporation uses the mileage log to calculate the amount the official or employee should reimburse the Corporation for personal usage.

For employees with take-home vehicles, the commuting benefit is taxable income. In order to calculate each employee’s vehicle usage benefit for income tax purposes, the Corporation uses \$3 per day based on the actual number of days a take-home vehicle is used.

[The CEO]...
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The CEO Did Not Maintain Mileage Logs or Reimburse the Corporation Timely

We reviewed monthly mileage log sheets for the six employees who were assigned take-home vehicles for the period January 2016 through September 2019 (during our audit period some of these employees changed, therefore, we reviewed records for a total of seven individuals) to assess whether employees maintained mileage logs, reimbursed the Corporation for \$260 annually (as required by the policy) and for personal use mileage. We found that, with the exception of the CEO, the employees maintained mileage logs which were reviewed by their supervisors, the employees also periodically reimbursed the Corporation for personal mileage recorded and the annual charge was correctly deducted from their pay.

The CEO did not comply with the policy and procedures. As such, he did not demonstrate appropriate “tone at the top,” which is essential to establish strong internal controls. The CEO did not complete or maintain biweekly mileage logs and did not reimburse the Corporation timely for personal use mileage. In addition, the \$260 annual charge was not correctly withheld as required by the policy and the procedure.

Mileage Logs – The CEO’s mileage logs were completed at a later date and not reflective of actual miles driven. The CEO was assigned a take-home vehicle from July 2016 until April 2019. After we engaged the audit the Board passed a resolution in December 2019, “to approve the vehicle turn in and the increased salary of \$7,000” for the CEO (and another official who was also discontinuing the use of a take-home vehicle).

We reviewed the mileage logs on file for the CEO, for the period July 2016 through April 2019, and determined that the mileage logs were not complete or accurate. For example, mileage logs dated July 2016 through October 2016 did not include the detail of business and personal mileage, but only included odometer readings at refueling. In addition, the total miles recorded per the mileage log for the three-day period from March 7 through March 9, 2017 was 200 miles, which is 460 miles less than fuel odometer readings recorded and also less than the round trip distance to the location where he purchased fuel. Additionally for the week of April 23 through 29, 2018, beginning mileage was recorded as 44,311 miles and ending mileage as 44,998, and for the following week of April 30 through May 6, 2018, beginning mileage was the same as the previous week at 44,311 and ending mileage at 45,808.

For the 34 months the CEO was assigned a take-home vehicle, there were no mileage logs on file for 13 months. In addition, we noted a number of instances in which recorded mileage for the day averaged 50 miles. For example, on November 25, 26 and 27, 2016, total daily miles recorded was 40, 60 and 50, respectively. These daily mileage amounts are less than the CEO’s round-trip commute from his residence to the Corporation’s main office, and his time records indicated these days as worked. Therefore, the CEO’s mileage logs could not be relied on to assess whether there was an accurate accounting of his business and personal miles.

The CFO told us that there may be inaccuracies with the CEO’s mileage logs because the CEO did not always properly maintain mileage logs and that he sometimes used his personal vehicle for work related travel and to commute. In addition, no one was designated to review the CEO’s mileage log sheets. The Corporation’s Internal Auditor told us that he was not responsible for reviewing the CEO’s biweekly mileage log, but in April 2019 he reviewed them as part of his internal audit procedural reviews. When he found that the mileage logs were not on file, he requested that the CEO complete them. Therefore, some of the logs were completed at a later date using estimates.

Reimbursement For Personal Use – For the audit period, total miles logged by the seven employees was 551,200 miles, with 44,100 miles (8 percent) for personal use. All employees assigned a take-home vehicle reimbursed the Corporation (a total of \$5,455 for the period), with the exception of the CEO. Reimbursements

were made monthly through payroll deductions and by check for personal use indicated on mileage logs.

We found that because the CEO did not complete biweekly mileage logs, he did not reimburse the Corporation timely. For the period prior to April 2019, the CEO reimbursed the Corporation on two occasions, by checks dated: February 24, 2017 for \$48.90 and November 9, 2017 for \$84.20. In April 2019, the Internal Auditor prepared an estimate of the CEO's business and personal mileage to determine the reimbursement that should have been made. The Internal Auditor estimated that the CEO owed the Corporation \$3,484 for the period July 2016 through April 2019. The CEO paid this reimbursement in April 2019.

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timely.

Due to the discrepancies in the mileage logs discussed above, we reviewed the estimated mileage report prepared by the Internal Auditor to assess whether it was reasonable. The Internal Auditor used the total mileage Corporation vehicles were operated during the time they were assigned to the CEO and subtracted the business miles that were supported by documentation such as the CEO's itinerary and his commute from his residence to the Corporation's main office. The remaining mileage was used to calculate the CEO's reimbursement. We found that based on the information available, the estimated mileage report was a realistic estimate of the CEO's personal miles and the reimbursement due to the Corporation.

Annual Charge and Use of Vehicle Benefit – We found that while the CEO had use of a Corporation vehicle from June 2016 through March 2019, the biweekly deductions were not withheld from his pay from June 2016 through January 2017. The CFO indicated that this was overlooked when the CEO was issued the vehicle. While the biweekly deductions began in February 2017 for the CEO, the Corporation did not recover unpaid prior deductions. The CFO did not recall the reason why they handled the deductions in this manner. In addition, based on the estimated days worked during the period the CEO had use of the take-home vehicle, we determined that the vehicle benefit may not have been correctly recorded for the period. Therefore, this benefit might not have been accurately reported for income tax purposes.

Take-Home Vehicles Usage Was More than Incidental

The policy allows personal use of take-home vehicles but does not specify whether personal use should be limited. Because of this, we reviewed the mileage logs for take-home vehicles and found that two employees logged personal miles that were more than incidental usage. For comparison, of the five employees assigned take-home vehicles in 2019, these two employees averaged more than 15 percent of total miles reported as personal use, while the other three employees averaged less than 6 percent of total miles reported.

The CFO told us that the policy did not have a restriction for personal use but required employees to reimburse the Corporation. Also, the policy was in the process of being reviewed by Corporation management, and some of the anticipated recommendations for the Board would include addressing unrestricted personal use and/or discontinuing the use of take-home vehicles by some employees. However, as of the end of our fieldwork, the Board only addressed the CEO and another official turning in their vehicles and the related increase in salary previously mentioned.

We observed the following usage, including days the two employees were not working:

- In 2018, one employee averaged more than 400 miles per month for personal use, and for December 2018 the employee logged 876 miles for personal use. This included more than 300 miles during a period in which this employee was not working.
- From October 2018 through September 2019, another employee averaged 440 miles per month for personal use and logged 880 miles for July 2019. This included 169 miles during a period in which this employee was not working.

Although we found these employees reimbursed the Corporation for personal usage, allowing employees assigned take-home vehicles, and other individuals so designated by the employees, unrestricted use of these vehicles, including when they are not working, increases the Corporation's liability and vehicle maintenance costs. Additionally, personal use of a take-home vehicle, including during periods an employee is not working, may have income tax implications.

What Do We Recommend?

The Board and Corporation officials should:

1. Ensure all officials and employees assigned a take-home vehicle complete mileage logs as required by the policy.
2. Ensure all officials and employees have a supervisor or another official assigned as applicable to review mileage logs and ensure the Corporation is reimbursed timely for personal use of a take-home vehicle.
3. Discuss with legal counsel whether the Corporation should seek reimbursement from the CEO for unpaid deductions for vehicle use.
4. Review and consider updating the policy to: minimize personal use, restrict vehicle use to the Corporation's geographical area of operation, require Board approval for travel to other locations, limit use of the vehicle

to days employees are working and ensure Corporation vehicles are driven by authorized employees.

5. Discuss with legal counsel whether there are income tax implications relating to take-home vehicle use and take any needed action.

Appendix A: Response From Corporation Officials



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WESTERN REGIONAL OFF-TRACK
BETTING CORPORATION

September 10, 2021

Jeffrey D. Mazula, Chief Examiner
Office of State Comptroller
295 Main Street, Suite 1032
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RE: Report of Examination 2021M-52
Oversight of Take-Home Vehicles
Report of Examination 2021M-65
Marketing and Promotional Program

Dear Mr. Mazula:

On behalf of the members of the Board of Directors, management and staff of the Western Regional Off-Track Betting Corporation (“Western”), allow me to thank you for this opportunity to respond to the findings and recommendations set forth in the State Comptroller’s Office draft audit report. This letter is in response to the findings and recommendations outlined in your draft audit report 2021M-52 and 2021M-65 (“Report”) and as discussed at the exit conference on July 28, 2021 at Western’s offices.

The Report is broken down into two (2) separate examinations as set forth above. For each recommendation included in the Report, the following is our corrective actions(s) taken or proposed.

Report 2021M-52

Report Recommendation #1

Ensure all officials and employees assigned a take-home vehicle complete mileage logs as required by the policy.

Implementation Plan of Action(s):

Western is presently reviewing its Motor Vehicle Use Policy to include the elimination of take-home vehicles for assigned Western employees. Of the three (3) take-home vehicles that allow personal use, Western requires its employees to complete mileage logs and submit such use reports to the accounting department, which are thereafter forwarded to the employee's supervisor. The supervisor will review the logs and will sign off on a monthly basis.

Report Recommendation #2

Ensure all officials and employees have a supervisor or another official assigned as applicable to review mileage logs and ensure the Corporation is reimbursed timely for personal use of a take-home vehicle.

Implementation Plan of Action(s):

As mentioned above, Western is contemplating the elimination of take-home vehicles for assigned Western employees. However, in the meantime, a procedure has been established to ensure that a supervisor or officer is assigned the responsibility to review vehicle logs monthly to determine and collect any reimbursement from the assigned employee for personal use of the vehicle.

Report Recommendation #3

Discuss with legal counsel whether the Corporation should seek reimbursement from the CEO for unpaid deductions for vehicle use.

Implementation Plan of Action #3:

As noted in the Report, the Internal Auditor calculated that the CEO owed Western \$3,484 for personal use of an assigned vehicle for the period July 2016 through April 2019. The CEO paid this reimbursement amount in April 2019. As a follow-up to this Report and based on the above recommendation, legal counsel worked with the Internal Auditor and determined that an additional reimbursement of \$528.00 was due from the CEO for deductions for vehicle use not included or withheld by the payroll department for the 7-month period from June 2016 through January 2017. The \$528.00 reimbursement was deducted from CEO's payroll check dated August 19, 2021, thus allowing proper income tax to be withheld.

Report Recommendation #4

Review and consider updating the policy to: minimize personal use, restrict vehicle use to the Corporation's geographical area of operation. Also, require the Board to approve travel to other locations, limit use of the vehicle to days employees are working and ensure Corporation vehicles are driven by authorized employees.

Implementation Plan of Action #4:

As noted above, Western is in the process of updating its Vehicle Use Policy to address all recommendations set forth above. In addition, Western is reviewing whether to eliminate all take-home vehicles.

Report Recommendation #5

Discuss with legal counsel whether there are income tax implications relating to take-home vehicle use and take needed action.

Implementation Plan of Action #5:

Based on this recommendation, legal counsel will work with our tax consultants to determine what, if any, income tax implications may relate to take-home vehicle use and make a recommendation to the Board regarding what action should be taken.

Once again, the members of the Board of Directors, management and staff of Western would like to thank you for your recommendations. As you can see, Western has already implemented many of the recommendations and will be working diligently to review and implement the others. It is the goal of Western to conduct its business in the most efficient and transparent manner possible. It is with that in mind that we accept and thank you again for these recommendations.

Very truly yours,
Western Regional Off-Track
Betting Corporation

Richard D. Bianchi, Chairman of the Board

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to the State Comptroller's authority as set forth in Article 5 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We reviewed the Corporation's motor vehicle use policy and related procedure to determine the practices in place relating to take-home vehicles.
- We interviewed Corporation officials to gain an understanding of controls and procedures over take-home vehicles.
- We reviewed mileage logs of employees assigned take-home vehicles to assess whether the employees completed mileage logs identifying business and personal use miles.
- We compared mileage logs to spreadsheets maintained by employees assigned take-home vehicles to calculate and track the reimbursement for personal use to assess whether they were accurate and that employees reimbursed the Corporation for personal use.
- We reviewed mileage logs and time records of employees assigned take-home vehicles to assess whether they used the vehicles on days they were not working.
- We reviewed the CEO's mileage logs, estimated personal usage, and payroll deductions for vehicle usage to assess whether the CEO's reimbursements to the Corporation were reasonable.
- We reviewed mileage logs and payroll deductions of employees assigned take-home vehicles to assess whether reimbursements to the Corporation were accurate.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a written corrective action plan (CAP) that addresses the recommendations in this report and forward it to our office within 90 days. For more information on preparing and filing your

CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review.

Appendix C: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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