

New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Administration of Concession Services at Riverbank State Park: Tri-State Snacks & Concessions

Office of Parks, Recreation and Historic Preservation



Report 2013-S-83

January 2015

Executive Summary

Purpose

To determine whether the Office of Parks, Recreation and Historic Preservation (Parks) adequately monitored its concession contractor, Tri-State Snacks and Concessions (Tri-State), at Riverbank State Park, and whether Tri-State remitted the appropriate contract-related revenues to Parks. The audit covers the period February 1, 2011 to June 30, 2014.

Background

Riverbank State Park (Riverbank), a 28-acre rooftop park on the west side of Manhattan, is open 365 days a year and has a variety of indoor and outdoor athletic and cultural facilities. Tri-State operates Riverbank's 150-seat restaurant, under a five-year revenue contract with Parks that commenced in September 2010. The contract terms required Tri-State to remit a flat monthly fee and a percentage of annual sales revenues over \$750,000 to Parks. Tri-State is required to maintain adequate books and records to support its revenue remittances.

Key Findings

- We found that Tri-State did not comply with all contract requirements, such as hours of operation and maintaining financial records.
- Tri-State owes Parks at least \$10,485 in licensing fees and potentially as much as \$37,034 in additional fees, as a result of underreported and possibly unreported sales revenue. There were unexplained deposits made to Tri-State's contract-related bank accounts.
- In addition, Parks did not adequately monitor Tri-State's operations to verify the accuracy of its revenue reports or compliance with other contract terms.

Key Recommendations

- Recover the \$10,485 in licensing fees due Parks based on the underreported Tri-State revenues identified in this report.
- Follow up on the \$37,034 of potentially underpaid licensing fees due Parks (based on unreported sales) and the unexplained deposits into Tri-State's contract-related bank accounts.
- Develop and implement an effective revenue contract monitoring system. Such monitoring should include (but not be limited to): periodic site visits to the location of the contracted services; an assessment of the contractors' internal controls; periodic reviews of contract-related books and records; and verification of sales and other major contract requirements.

Other Related Audits/Reports of Interest

[Office of Parks, Recreation and Historic Preservation: Administration of Contract X00310, Bethpage Associates, LLC \(2001-R-4\)](#)

[Office of Parks, Recreation and Historic Preservation: Food and Beverage Concession Contract, Jones Beach State Park \(2006-R-2\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

January 20, 2015

Ms. Rose Harvey
Commissioner
Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12207

Dear Ms. Harvey:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Administration of Concession Services at Riverbank State Park: Tri-State Snacks & Concessions*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

The New York State Office of Parks, Recreation and Historic Preservation (Parks) is responsible for the operation and the stewardship of 178 parks and 35 historic sites located in 11 park regions throughout the state. Riverbank State Park (Riverbank), one of six State parks in the New York City region, is a 28-acre, rooftop park located on the west side of Manhattan. Riverbank's amenities include an Olympic-size pool, a skating rink, indoor and outdoor athletic facilities, and picnic areas. About 3 million people visit Riverbank annually.

Riverbank also has a 150-seat restaurant operated by Tri-State Snacks and Concessions (Tri-State), pursuant to a five-year contract with Parks that commenced in September 2010. The contract requires Tri-State to remit to Parks an annual flat fee of \$24,000, payable in 12 monthly installments of \$2,000 each. Parks is also entitled to a "landlord" fee of \$1,000 a month, and a percentage of Tri-State's gross annual sales over \$750,000. The stated percentage is 9 percent for 2010, 10 percent for 2011, 12 percent for 2012 and 2013, and 14 percent for 2014.

Tri-State is required to maintain adequate records to document all restaurant sales and to submit a monthly sales report to Parks to validate the appropriateness of the remitted fee. Tri-State's fees are required to be paid to Parks by the 15th day of each month for the immediate preceding month. During the audit period, Tri-State reported total sales of \$1,864,464 and remitted a total of \$123,000 to Parks.

Audit Findings and Recommendations

We found that Tri-State did not comply with all contract requirements, such as hours of operation and maintaining financial records. In addition, Tri-State underreported its sales for at least two of the three years in our audit scope. Consequently, Tri-State owes Parks at least \$10,485 and potentially material amounts of additional licensing fees. Also, Parks did not adequately monitor Tri-State's operations, particularly the accuracy of its revenue reports.

Contractor Compliance

Recordkeeping and Control Deficiencies

Tri-State's contract requires it to maintain sales records that Parks could inspect upon 24 hours' notice. However, we were informed that Tri-State did not have a complete accounting system in place to record their sales from February 2011, when the restaurant purportedly opened for business, until May 2012 (a period of 16 months). At that time, Tri-State hired an outside accounting firm, which established an accounting and sales ledger using a commercial accounting software program. An independent bookkeeper was brought in to post the prior sales to the automated accounting system based on financial information provided to him by Tri-State officials.

In addition to the lack of a complete accounting system for 16 months, neither Tri-State nor Parks had formal controls in place to ensure that all contract revenues were captured, recorded, and reported accurately. For example, no one compared Tri-State's point-of-sales records to its official books or to the monthly sales reports submitted to Parks. Without accurate records, Parks could not adequately determine if Tri-State reported all of its sales at Riverbank and paid the appropriate licensing fees.

Due to Tri-State's lack of a complete accounting system for a significant period of the contract, and the absence of internal controls over the collection, recording, and reporting of contract-related revenue, there was considerable risk that Parks did not receive the revenues it was due pursuant to the contract.

Underreported Sales

To determine whether Tri-State accurately reported its sales revenues to Parks, we compared Tri-State's sales ledger to its monthly sales reports to Parks and related point-of-sales documentation. We identified a number of discrepancies. Specifically, the amounts of sales recorded in Tri-State's sales ledgers for 2011 and 2012 were higher than the amounts reported to Parks on monthly sales reports. Moreover, Tri-State's actual annual sales for this two-year period exceeded the \$750,000 threshold that would trigger additional licensing fees (under the contract), which Tri-State had not paid to Parks. The additional fees amount to \$668 for 2011 (10 percent of the \$6,684 in gross sales above \$750,000) and \$9,817 for 2012 (12 percent of the \$81,810 in gross sales above \$750,000), for a two-year total of \$10,485.

Table 1 summarizes the discrepancies in reported sales revenues and the additional licensing fees due Parks.

Table 1

Year	Revenue, per Sales Ledger	Reported Sales to Parks	Under/(Over) Reported Amount	Revenue Above \$750,000	Rate Applicable to Sales Over \$750,000	Additional Licensing Fees due Parks
2011	\$756,684	\$576,795	\$179,889	\$ 6,684	10%	\$668
2012	831,810	583,242	248,568	81,810	12%	9,817
2013	469,543	521,293	(51,750)	--	N/A	N/A
Totals	\$2,058,037	\$1,681,330	\$376,707	\$88,494		\$10,485

As noted in the table, the net amount of underreported revenue totaled \$376,707 for the period February 1, 2011 through December 31, 2013. When we originally brought this matter to the attention of Tri-State officials, they were unable to explain the differences.

We selected a sample of Tri-State's daily revenue reports and attempted to reconcile them to the monthly reports submitted to Parks. On several occasions, we noted that the catering sales recorded on Tri-State's daily revenue reports were not included on the monthly reports submitted to Parks. During a subsequent discussion with Tri-State officials, they indicated that they may have unintentionally excluded some of their catering revenue from their reports to Parks.

According to Parks officials, Tri-State's former bookkeeper posted erroneous entries to Tri-State's automated accounting system. Further, an accounting firm was hired to resolve the financial discrepancies, as previously detailed. Parks officials also provided us with revised sales revenue figures (prepared by Tri-State), which totaled \$1,798,045 for the three-year audit period. However, this was \$259,992 (\$2,058,037 - \$1,798,045) less than the amount recorded on Tri-State's automated accounting system. Given the control weaknesses previously detailed, we believe the revised sales figure is also incorrect.

Unexplained Bank Deposits

We found that deposits into Tri-State's contract-related bank accounts were consistently higher than the amount of sales recorded on its sales ledger and the sales reported to Parks. Tri-State officials attributed the differences to deposits that were not from contract-related sales. However, they did not provide us with sufficiently detailed explanations and documentation of the purported non-contract-related financial activity. As shown in Table 2, bank deposits exceeded reported revenues (per the accounting system) by \$553,886 over our three-year audit period. If that amount represented unreported sales, we estimate that Tri-State would have owed Parks an additional \$37,034 in licensing fees.

Table 2

Year	Bank Deposits	Revenue, per Sales Ledger	Difference	Rate Applicable to Sales Over \$750,000	Potential Additional Licensing Fees due Parks
2011	\$959,690	\$756,684	\$203,006	10%	\$20,301
2012	971,253	831,810	139,443	12%	16,733
2013	680,980	469,543	211,437	N/A	N/A
Total	\$2,611,923	\$2,058,037	\$553,886		\$37,034

When we conveyed this issue to Parks officials, they prepared a list for each year noting deposits derived from non-contract revenue. The lists, which totaled \$417,052, included some receipts from fire insurance proceeds and shareholder deposits. However, the majority of the amounts deposited came from transfers from non-contract-related accounts. Moreover, Tri-State did not provide adequate supporting documentation (i.e., copies of checks, statements from the fire insurance company, shareholder's remittance, and deposit receipt forms) to sufficiently explain the nature of the deposits. Thus, we could not verify whether the deposits in question were contract-related revenues or not.

Deviation From the Prescribed Operating Schedule

The contract requires Tri-State to provide a full-service restaurant commensurate with the normal operating hours of the park. In its response to Parks' contract proposal, Tri-State officials asserted that they would be operating six days a week serving breakfast, lunch, and dinner. Except for the deviations explained below, Tri-State's monthly revenue reports to Parks supports their assertion. According to Parks officials, if the concessionaire opts to change its operating hours, it is required to formally notify Parks officials and obtain their approval to do so.

We determined that Tri-State did not post any sales data into its automated accounting system for 147 days that the restaurant should have been open based on the above criteria. Tri-State officials stated that the restaurant was closed on some of those 147 dates. However, there was no documentation that Tri-State informed Parks officials of a reduced operating schedule (as contractually required), or that Parks officials were aware of reductions to the operating schedule. As such, the restaurant was either closed (in violation of the contract), or it was open, and Tri-State did not report sales for those days. (Note: As of the summer of 2014, Tri-State's restaurant operations were reduced to weekend brunches, catered affairs, and special events. Parks officials informed us that they were aware of the reduced operating hours, but did not require Tri-State to obtain Parks' formal prior approval.)

Given the absence of formal requests and approvals to reduce operating hours during the audit period, we cannot be sure that the restaurant was actually closed on all of the 147 dates for which

revenues were not recorded. Further, given the underreported revenues and unexplained bank deposits, as previously detailed, there is considerable risk that the restaurant was operating on at least some of the 147 days in question.

After we brought this issue to the attention of Parks officials, they performed a detailed review of the 147 days. Based on their review, officials advised us that the restaurant was closed on 43 days; revenues were included on the monthly reports for 65 days (but were combined with revenues reported for other days); and no revenue was reported (perhaps due to a lack of business) on the remaining 39 days. Parks further stated that the restaurant's operating schedule was discussed continuously with Tri-State officials. However, there was no documentation of these discussions, nor was there detailed documentation of the revenues purportedly reported for the 65 days when they were combined with revenues from other dates.

During our audit period, Tri-State's sales averaged about \$1,400 per day. If the restaurant was open for a significant portion of the 147 days in question, the unreported sales for such days could be material. The sales could also have resulted in additional licensing fee revenues for Parks.

Contract Monitoring

When a State agency awards a revenue contract (such as Parks' contract with Tri-State), agency officials should ensure the vendor remits the proper amounts to the agency, consistent with contract terms. Common monitoring techniques include periodic site visits to observe operations and review of selected internal controls and contract-related books and records supporting financial activities.

We concluded, however, that efforts by Parks officials to monitor Tri-State were rather limited. In particular, there were no examinations of Tri-State's books and records or analysis of controls over Tri-State's revenue collection, recording, and reporting processes. We note that Parks had problems with Tri-State's immediate predecessor. These problems included the underreporting of contract-related sales and the underpayment of fees due to Parks. Given these circumstances, Parks should have ensured that monitoring of Tri-State's activities was adequate.

In responding to our preliminary observations, Parks officials told us that they will be taking corrective actions to improve their oversight over concessionaires. These actions include hiring an auditor who will perform an annual risk assessment of concession contractors to identify those in need of audit.

Recommendations

1. Recover the \$10,485 in licensing fees due Parks based on the underreported Tri-State revenues identified in this report.
2. Follow up on the \$37,034 of potentially underpaid licensing fees due Parks (based on unreported sales) and the unexplained deposits into Tri-State's contract-related bank accounts.

3. Develop and implement an effective revenue contract monitoring system. Such monitoring should include (but not be limited to): periodic site visits to the location of the contracted services; an assessment of the contractors' internal controls; periodic reviews of contract-related books and records; and verification of sales and other major contract requirements.

Audit Scope and Methodology

The objective of this audit was to determine whether Parks adequately monitored Tri-State's compliance with contract terms, and whether Tri-State remitted the appropriate concession revenues to Parks. The audit covers the period February 1, 2011 to June 30, 2014.

To accomplish our objectives, we reviewed the terms of the contract between Parks and Tri-State, and we reviewed and assessed the internal controls over Tri-State's revenue recording and reporting practices. We examined Tri-State's contract-related books and records, including its general ledger, bank statements, income and sales tax returns, catering contracts and reports, and point-of-sale receipts from cash registers. We reviewed the monthly sales reports submitted to Parks, as well as documentation that Parks provided to show payments, checks, and deposits from Tri-State. We interviewed Parks and Tri-State officials, as well as Tri-State's bookkeeper and accountant.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 objectives. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting rights) to certain boards, commissions, and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of our report to Parks and Tri-State officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of the report. In response to our draft report, Parks officials agreed to enhance their monitoring of revenue contracts. However, they generally disagreed with our other recommendations, pertaining to Tri-State's reporting of revenues and payments of related license fees. Our rejoinders to certain Parks' comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Parks shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



New York State Office of Parks, Recreation and Historic Preservation

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Andrew M.
Cuomo
Governor

Rose Harvey
Commissioner

December 31, 2014

Mr. Frank Patone, Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 10038

Dear Mr. Patone:

We would like to take this opportunity to provide our comments to the draft audit report entitled "Administration of Concession Services at Riverbank State Park: Tri-State Snacks & Concessions" (2013-S-83). Our specific comments to the findings and recommendations can be found below.

Recommendation #1: Recover the \$10,485 in licensing fees due Parks based on the underreported Tri-State revenues identified in this report.

Response: During the audit, Tri-State Snacks & Concessions provided revised financial reports to Parks along with an explanation of how the errors occurred. Parks in turn provided this information to OSC who dismissed the revised reports and maintained the original finding. However, Parks is comfortable with the revised information provided by the concessionaire and has provided them with the opportunity to submit amended tax returns. Based on the documentation provided to date, Parks does not believe further license fees are due, and will make a final determination regarding any additional fees after receipt of the amended tax returns.

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Comment
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Recommendation #2: Follow up on the \$37,034 of potentially underpaid licensing fees due Parks (based on unreported sales) and the unexplained deposits into Tri-State's contract-related bank accounts.

Response: During the audit, Tri-State Snacks & Concessions provided Parks with full access to all bank statements and provided explanations for transfers into the operating account. This information was forwarded to OSC for consideration but was rejected. Examples of what OSC considers "unexplained bank deposits" include two deposits totaling more than \$157,000 that were made prior to the restaurant opening for business. These deposits were clearly not derived from restaurant sales. Additionally, the audit finding does not take into consideration that restaurant sales deposited into the operating account include sales tax and other non-revenue items. Simply stating that all deposits should be considered concession revenue and therefore subject to licensing fees by Parks, as illustrated by Table 2 in the report, is an illogical conclusion that is belied by documentation provided by Parks.

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Comment
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*See State Comptroller's Comments, page 14

Recommendation #3: Develop and implement an effective revenue contract monitoring system. Such monitoring should include (but not be limited to): periodic site visits to the location of the contracted services; an assessment of the contractor's internal controls; periodic reviews of contract-related books and records; and verification of sales and other major contract requirements.

Response: Parks agrees with the recommendation above and will continue to improve upon our concession contract design, management, and monitoring efforts.

The opportunity to respond to the draft audit report is appreciated. If you have any questions or concerns regarding our response or the additional information provided, please don't hesitate to contact Tracy Robbins, Director of Internal Audit and the agency's liaison to external auditors.

Sincerely,



Mindy Scott
Deputy Commissioner for Finance and Administration

cc: Rose Harvey, Commissioner

State Comptroller's Comments

1. We did not dismiss the revised reports, explanations, or any other information provided to us by Parks or Tri-State officials. In fact, we examined all of the information provided to us carefully in developing our final audit conclusions. Moreover, after we reviewed all of the available evidence, we still found material unexplained discrepancies among the pertinent Tri-State sales reports, bank statements, and other related accounting records, as detailed in the final report. In addition, we question the basis upon which Parks officials believe that no further license fees are due from Tri-State. As Parks states, it is providing Tri-State with the opportunity to submit amended tax returns. Until the amended returns are submitted and the pertinent records supporting those returns are reviewed, we believe that Parks officials should reserve judgment on whether or not additional Tri-State license fees are due. Given the aforementioned discrepancies and the lack of effective internal controls over revenue recording and reporting, we maintain that there is still material risk that Tri-State owes additional fees to Parks.
2. Contrary to the Park's assertion, we carefully examined all of the information provided to us. Further, we acknowledge that a portion of the deposits in question could have been prior to the restaurant opening for business and/or related to other non-sales revenue activity. Nevertheless, the fact remains that neither Parks nor Tri-State provided us with sufficient documentation to support the purported non-sales deposits, including the deposit of \$157,000 specifically referenced by Parks. Further, even if the \$157,000 deposit was non-sales related, there was no detailed explanation for the remaining \$396,886 (\$553,886 - \$157,000) in unresolved bank deposits. Consequently, we maintain that there is still material risk that Tri-State underreported sales revenue, upon which license fees might have been due.
3. We did not state that all deposits should be considered concession revenue and therefore subject to licensing fees by Parks. Rather, we noted that we could not verify whether the deposits in question were contract-related sales revenues or not. Thus, Parks officials should follow up, as appropriate, to determine if there are any concession revenues that were previously unreported by Tri-State.