

**Nassau County
Office of the Comptroller**



**Limited Review of Nassau County's
Hotel and Motel Occupancy Tax Collections**

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Introduction

The Nassau County Comptroller's Office has reviewed the administration and collection of the County's Hotel and Motel Occupancy Tax revenues for the period January 1, 2009 through December 31, 2010. Field visits were made to twelve (12) hotels and motels in order to verify that the taxes were reported and remitted to Nassau County and that certificates of authority to collect occupancy taxes were displayed, in compliance with County Law.

Background

The Office of the Nassau County Treasurer ("Treasurer's Office") administers the collection of the County's hotel and motel occupancy tax. The State of New York authorized Nassau County to impose a tax "upon persons occupying hotel or motel rooms in such County."¹ Pursuant to this authority, in 1994 the County enacted the Nassau County Hotel and Motel Occupancy Tax, which provides that an occupancy tax at the rate of 3% of the per diem rental rate for each room shall be imposed. The owner or operator is responsible for the collection of this tax at the same time that he collects the rent from the occupant. The Local Law further provides that all owners of hotels/motels shall register with the Nassau County Treasurer's Office, and obtain a certificate of authority.²

According to the Local Law, "the revenues resulting from the imposition of the tax shall be used to promote tourism and convention business in Nassau County as well as to provide for care, maintenance and interpretation for the general public of certain structures and areas under the jurisdiction of the Nassau County Department of Recreation and Parks for operating or program support of non-profit museums and cultural organizations in Nassau County and to fulfill the general obligations of Nassau County."

In 2010, the Occupancy Tax revenue collected from 56 Nassau County hotels and motels by the Treasurer's Office was just over \$4 million. This revenue was down by \$1.6 million from 2007, just before the recession started, but represented an increase of over nine percent, or approximately \$350,000 from 2009's revenues. Nassau County Hotel and Motel Occupancy Tax revenues for the period 2007 through 2010 were as follows:

¹ N.Y. Tax Law § 1202-q (1)

² Nassau County, N.Y., Misc. Laws, Title 24, §1(1994)

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Occupancy Tax Revenues		
Year	Amount	% Change from Previous Year
2007	\$5,638,698	32.56%
2008	\$4,574,987	(18.86)%
2009	\$3,666,232	(19.86)%
2010	\$4,019,150	9.63%

Twelve hotels and motels, approximately 21% of the properties, were selected for field visits in order to determine the accuracy and completeness of their Hotel and Motel Tax Remittances. We included in that sample, based on recommendations provided by the Treasurer's Office, two hotels that had instances of delinquencies in payments and one hotel that had not registered with the Treasurer's Office since its opening in 1994. The selected 12 hotels (which represented 21% of the 56 hotels and motels remitting occupancy taxes) and their revenues for 2009 and 2010 are as follows:

Audited Hotels and Motels Gross Revenues*

Establishment	2009	2010
Long Island Marriott Hotel	\$22,987,723	\$24,411,709
Marriott Residence Inn	7,334,958	7,925,784
Inn at Fox Hollow	6,685,488	6,938,463
La Quinta Inn & Suites	4,969,418	4,837,378
Inn at Great Neck	4,215,750	4,077,746
Red Roof Inn	3,942,045	4,010,901
Glen Cove Mansion & Conference Center	3,903,483	4,507,995
Inn at Plainview	3,570,056	3,426,737
Capri Lynbrook Motor Inn	1,327,071	1,293,945
Allegria Hotel & Spa	680,055	4,045,939
Plantation Motel Inc.	667,226	895,147
Jones Beach Hotel	588,061	507,465
Totals	\$60,871,334	\$66,879,209

*Gross Revenue is per quarterly Hotel and Motel Tax Remittance Forms

See Appendix A for the details of the field visits to each hotel and motel.

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Comparison of Hotel/Motel Tax Revenues in Nassau and Suffolk Counties

A comparison between Nassau and Suffolk Counties' hotel and motel tax revenues was performed, noting the number of registered hotels and motels in each County. We noted that in 2009, Suffolk County appeared to have been similarly affected by the recession, however, they experienced only a 9.58% decline in revenues, while Nassau County's revenues declined by a substantially higher 19.86%.

Even though Nassau County has only 56 hotels and motels, the approximately \$4 million received in 2010 was more than half of what Suffolk County received for its 359 hotels. Although Suffolk County has many more hotels than Nassau County, a considerable number are seasonal and operate for only a portion of the year, particularly those on the eastern end of Long Island.³ Nassau County's proximity to New York City assists the County's hotels with attracting business travelers, and results in a higher occupancy rate than in Suffolk County.⁴ It should be noted that in 2010, Suffolk County's revenues increased substantially because of a tax increase from .75% to 3% as of December 1, 2009. This increase was reflected in 2010, as Suffolk County's Hotel and Motel Tax remittance cycle is the same as the New York State Quarterly Sales Tax Return schedule. Nassau County's quarterly cycle, on the other hand, follows the calendar year. The following schedule illustrates Nassau County and Suffolk County hotel and motel tax revenues for the years 2007 through 2010:

Long Island Hotel and Motel Tax Revenue Comparison

Year	Nassau County- 56 Hotels	% Change from Previous Year	Suffolk County- 359 Hotels	% Change from Previous Year
2007	\$5,638,698		\$1,846,895	
2008	\$4,574,987	(18.86)%	\$1,902,964	3.04%
2009	\$3,666,232	(19.86)%	\$1,720,614	(9.58)%
2010*	\$4,019,150	9.63%	\$7,014,299	307.66%

* Suffolk County's tax rate increased from .75% to 3% as of December 1, 2009.

Audit Scope, Objective and Methodology

The objective of the audit was to ascertain whether or not Nassau County is collecting all revenue to which it is entitled in the form of hotel/motel taxes. New York State and Nassau County law authorize the Treasurer's Office to collect the taxes.⁵ The County Treasurer advised

³ Suffolk County Planning Commission, *Analysis of Hotels and Motels, Suffolk County, New York*, (November 1998), Suffolk County Department of Planning, *Demographic, Economic and Development Trends* (November 2008), *Hotels and Motels, Suffolk County, New York* (November 2, 2011).

⁴ *Newsday, Long Island Hotels 'Still Struggling'*, April 26, 2011.

⁵ New York Tax Law § 1202-q, Nassau County, N.Y., Misc. Laws, Title 24, §3.B.

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the Comptroller's Office that a review of the collections indicated that an audit of the books and records of the remitters was necessary and requested that the Comptroller's Office's auditors perform the examination.⁶

To achieve our objective, we evaluated the internal controls and procedures of the Treasurer's Office and conducted audits of Occupancy Tax remittances in order to determine if:

- comprehensive written procedures were in place and up to date;
- hotel and motel operators' quarterly Occupancy Tax returns were reviewed for accuracy and completeness;
- all hotel and motel operators were registered with the Treasurer's Office; and
- delinquent and unregistered hotels were identified and adequate and timely collection efforts were in place.

The scope of this audit focused on the administration of the Occupancy Tax Law and the collection of Hotel and Motel Tax Remittances for years 2009 and 2010.

We interviewed officials and employees of the Treasurer's Office and of the hotels and motels we examined. We reviewed the list of registered operators as well as the financial records pertaining to the Occupancy Tax revenues. We assembled a data base of Nassau County hotels and motels and compared it with the list of registered operators.

At the request of officials of the Treasurer's Office, we reviewed the books and records of 12 Nassau County hotels and motels, to verify the accurateness and completeness of their Hotel and Motel Occupancy Tax remittances. See Appendix A for details of our methodology and findings.

Memorandum of Understanding between the Treasurer's Office and the Comptroller's Office

A Memorandum of Understanding ("MOU") between the Treasurer's Office and the Comptroller's Office was signed on July 21, 2011, authorizing the Comptroller's Office to perform Occupancy Tax audits of hotels and motels. The agreement states that field audit staff members from the Comptroller's Office would be considered employees of the Treasurer's Office for the purpose of auditing, on behalf of the Treasurer, select hotels and motels in Nassau County.

⁶ February 24, 2011 E-mail from County Treasurer to Deputy County Comptroller.

Summary of Significant Findings

The Treasurer's Office Collection Efforts for Delinquent Hotel/Motel Tax Revenues have been Insufficient

We noted that there were deficiencies in the Treasurer's Office's collection efforts for delinquent hotel/motel taxes. Department officials advised us that the Treasurer's Office has turned over collection efforts to the Office of the County Attorney since the County Attorney has enforcement authority. However, the Miscellaneous Laws of Nassau County state "Such tax shall be collected and administered by the County Treasurer by such means and in such manner as other taxes which are now collected and administered".⁷ Therefore, the Treasurer's Office should be ensuring that collection efforts, even if delegated to another department, are ongoing and timely.

We were advised by Treasurer's Office employees that three hotels and motels were delinquent in paying their hotel/motel taxes, and in one instance, a hotel had not paid at all. In the past, the Office of the County Attorney assisted the Treasurer's Office in collecting hotel/motel taxes from delinquent or non-paying hotels and motels. However, the latest correspondence supporting the County's collection efforts for three of the four delinquent/non-paying hotels was dated in 2010. Our review noted that no recent follow-up efforts have been made by either the County Attorney's Office or the Treasurer's Office.

There have been multiple senior staff changes in both the County Treasurer's Office and the Office of the County Attorney, which may have affected the continuity of delinquent hotel/motel tax collection efforts. The Treasurer's Office does not have written procedures covering the hotel/motel tax revenue collection process, which could provide guidance and time frames on collection efforts. On December 2, 2011 we were advised by the Treasurer's Office that unpaid hotel/motel taxes will be referred to the County's collection agency, however, the Treasurer's Office is in the process of selecting a new collection agency. The Treasurer's Office also noted that they will develop a procedure for referring delinquent hotel/motel taxes to the collection agency.

The Treasurer's Office failed to issue Certificates of Authority as Required by County Law

Nassau County law provides for hotels and motels to prominently display certificates of authority to collect the occupancy taxes for the information of their guests.⁸ The Treasurer's Office was not furnishing such certificates to the County's hotels and motels, contrary to the Law, which calls for the Treasurer's Office to issue the certificates upon receiving applications from each new hotel and motel.⁹ The Law requires that the certificate be prominently displayed

⁷ Nassau County, N.Y., Misc. Laws, Title 24, §3 (B) (1994).

⁸ Nassau County, N.Y., Misc. Laws, Title 24, §3 (C) (1994).

⁹ Ibid.

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by the hotel/motel so that it comes to the notice of all occupants and to anyone seeking occupancy.¹⁰

Weaknesses were noted in the Treasurer's Office's Administrative Practices for Hotel and Motel Occupancy Tax Revenues

The Treasurer's Office has not established written procedures for the administration and collection of hotel and motel occupancy taxes.

The Treasurer's Office failed to perform reconciliations of the Hotel and Motel occupancy tax revenues received and this resulted in a \$15,000 misposting of unrelated revenue to the Hotel and Motel Tax Revenue account.

The Field Accountant in the Treasurer's Office who performs most of the administrative and collection duties for hotel and motel taxes does not make field visits to the hotels and motels or request and review the supporting revenue and exemption information for most hotels and motels, even though it is part of her job specifications.

Two Hotels Failed to Register with the Treasurer's Office or Failed to Pay Hotel and Motel Occupancy Taxes

The Jones Beach Hotel accrued over \$600,000 in fines to Nassau County due to its failure to register with the Treasurer's Office during the period November 1994 through July 2011. In addition, the Allegria Hotel & Spa has failed to pay its 2010 and 2011 quarterly hotel and motel occupancy taxes, which as of December, 2010 total more than \$112,000. See Appendix A for details.

The matters covered in this report have been discussed with officials of the Treasurer's Office during this review. On March 14, 2012 we submitted a draft report to the Treasurer's Office for its comments. The Treasurer's written comments and our response to those comments are included as Appendix B to this report.

¹⁰ Ibid.

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Findings and Recommendations

Audit Finding (1):

The Treasurer's Office Collection Efforts for Delinquent Hotel/Motel Tax Revenues have been Insufficient

The Law provides that the hotel and motel occupancy tax be collected and administered by the Treasurer's Office. In addition, the Law requires that the owner of the hotel/motel file returns and make payments of the tax to the Treasurer's Office on the first day of each February, May, August and November. In 2010, 56 Nassau County hotels and motels paid approximately \$4 million to Nassau County in Hotel and Motel Occupancy Taxes. Hotels and motels failing to file a return or filing late will be subject to a penalty of 5% of the amount due, plus interest at the rate of 1% of the tax for each month after the payment became due.¹¹

During the course of the audit, we noted that there were deficiencies in the Treasurer's Office's collection efforts for delinquent hotel/motel taxes. We noted the following exceptions:

- a) Department officials advised that the Treasurer's Office had turned over collection efforts to the Office of the County Attorney, which they indicated had enforcement authority. However, the Miscellaneous Laws of Nassau County state "Such tax shall be collected and administered by the County Treasurer by such means and in such manner as other taxes which are now collected and administered."¹² Therefore, the Treasurer's Office should be ensuring that collection efforts, even if delegated to another department, are ongoing and timely.
- b) As noted above, the Office of the County Attorney has assisted the Treasurer's Office in collecting hotel/motel taxes from delinquent or non-paying hotels and motels. We were advised by Treasurer's Office employees that three hotels and motels were delinquent in paying their hotel/motel taxes, and in one instance, a hotel had not paid at all. However, the last correspondence documenting collection efforts for three of the four delinquent/non-paying hotels dated from 2010, indicating that no recent follow-up efforts had been made.

At the conclusion of our audit, we were advised that the Treasurer's Office intends to refer unpaid hotel and motel occupancy taxes to the County's collection agency; however, the County is in the process of selecting a new collection agency at this time.

Audit Recommendations:

The Treasurer's Office should:

- contact the Office of the County Attorney's staff in order to coordinate and "step-up" collection efforts for delinquent or non-paying hotels and motels. This effort should

¹¹ Nassau County, N.Y., Misc. Laws, Title 24, §3 (B), (E), and §7 (D) (1994).

¹² Nassau County, N.Y., Misc. Laws, Title 24, §2 (B) (1994).

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begin now, and continue until the County's new collection agency is in position to assume the responsibility;

- develop written procedures covering the collection process for delinquent or non-paying hotels and motels; and
- consider measures that can be taken to improve collection of delinquent taxes. For example, we noted that Ulster County has taken measures to protect hotel/motel tax revenues by requiring hotel/motel operators to file a bond, issued by a surety company, to secure the payment of any occupancy taxes, penalties and interest due from hotel/motel operators.¹³ In addition, the potential of advocating for a revision in the law to provide for the establishment of a lien on the property of delinquent hotels and motels should be considered.

Audit Finding (2):

Inadequate Monitoring of Hotel and Motel Tax Remittances: Only cursory review, no review of supporting documentation

The Treasurer's Office is responsible for collecting Occupancy Taxes and may also request the owner's books relating to hotel/motel tax returns.

In order to ensure the County is collecting all revenue to which they are entitled in the form of hotel and motel taxes, the Treasurer's Office's Field Accountant II's, as per their job specifications, may perform field reviews of books of original entry, ledgers, and supporting records to ensure that information provided to the Treasurer is correct. The Treasurer's Office is not performing field reviews of hotel and motel occupancy taxes.

As stated on the Hotel and Motel Tax Remittance Form, "a written explanation or schedule of any exempted income claimed and of any refunds or credits claimed" should be attached to the Hotel and Motel Tax Remittance form, however, upon examination of the files from a sample of nine hotels that claimed exemptions for years 2009 and 2010, only two, or 22%, contained supporting documentation.

Audit Recommendation:

The Treasurer's Office should be more proactive in ensuring hotels submit the required supporting documentation for all exemptions claimed, and also perform periodic desk and/or field audits.

¹³ See page 11 of the Office of the County Comptroller, Ulster County, New York Hotel-Motel Occupancy Tax Report dated September 27, 2010.

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Audit Finding (3)

The Treasurer's Office failed to issue Certificates of Authority as Required by County Law

The Nassau County Hotel and Motel Occupancy Tax Law states that “the County Treasurer shall issue to each (hotel/motel) owner a certificate of authority empowering such owner to collect the tax from the occupant thereof. The County Treasurer shall issue to each owner a duplicate certificate for each additional hotel or motel owned by such owner. Each certificate or duplicate shall state the hotel or motel to which it was applicable as well as the sales tax number for the hotel or motel. Such certificates of authority shall be prominently displayed by the owner in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and non-transferable and shall be surrendered to the County Treasurer upon the cessation of business at the hotel or motel named or upon its sale or transfer.”¹⁴

All hotel and motel owners are required to register with the Treasurer's Office in order to obtain a Certificate of Authority to collect the Occupancy Tax. We requested to see the “Certificates of Authority” during our initial visits to several hotels; however, we were informed by a senior employee of the Treasurer's Office that they were never issued. After this finding was discussed with Treasurer's Officials, Certificates of Authority were issued to the hotels and motels; and a subsequent field visit to a hotel confirmed this.

The Treasurer's Office's website does not state that Nassau County hotels and motels must display a certificate of authority. In contrast, the City of New York, which levies a similar hotel room occupancy tax, prominently notes on its website that every operator of a hotel or motel in New York City must prominently display its Certificate of Authority at its place of business.¹⁵

Audit Recommendations:

- a) “Certificates of Authority” should be issued to all registered hotels/motels as soon as possible.
- b) Operators of hotels/ motels should also be instructed to have them displayed “in such a manner that it may be seen and come to notice of all occupants and persons seeking occupancy”.
- c) In addition, the Law, which provides that hotels and motels should obtain a certificate of authority and display the certificate, should be included on the Treasurer's Office's website.¹⁶ The Treasurer's Office should follow the lead of the City of New York, by prominently noting on its website that hotel and motel operators should display their certificates of authority.

¹⁴ Nassau County, N.Y., Misc. Laws, Title 24, §3 (C) (1994).

¹⁵ http://www.nyc.gov/html/dof/html/business/business_tax_hotel_shtml.

¹⁶ Nassau County, N.Y., Misc. Laws, Title 24, §3 (C) (1994).

Audit Finding (4):

There are No Written Procedures for Hotel & Motel Occupancy Tax Collection

Chapter 511 of the Laws of 1994 as amended by Chapter 179 of the Laws of 2000 authorized and empowered the County of Nassau to impose a hotel and motel occupancy tax in Nassau County not to exceed three per cent of the per diem rental rate for each room. The Office of the Treasurer is responsible for the administration and enforcement of this tax.

It was noted that the Treasurer's Office did not have written procedures for the collection of Hotel Occupancy Taxes.

Upon reviewing the Nassau County Charter and Administrative Code - Miscellaneous Laws (Title 24 - Nassau County Hotel Motel Occupancy Tax), and the Nassau County Office of Management and Budget Revenue Manual, it was found that these documents only describe the Law and not the administration of the Hotel & Motel Occupancy Tax collection. The Office of the New York State Comptroller has noted that documentation of policies and procedures is critical to the daily operations of an organization because they provide the fundamental framework, and the underlying methods and processes that employees rely on to do their jobs.¹⁷

Audit Recommendation:

All aspects of the hotel occupancy tax collection should be clearly documented in an up-to-date procedural manual.

Audit Finding (5):

The Treasurer's Office's Unreconciled Receivables resulted in a Misposting of Revenue

The Treasurer's Office is responsible for the administration and enforcement of the Occupancy Tax. The hotel and motel operators are required to file returns with and make payments of the tax to the Country Treasurer on a quarterly basis on the first day of each February, May, August and November.

An Excel schedule is prepared by the Treasurer's Office. This schedule lists the quarterly and total amounts of revenue by each hotel or motel, and is populated from Occupancy Tax check payments as per bank deposits. It should be noted that the check payments are compared with the computed amount on each Hotel and Motel Tax Remittance Form. In addition, a separate sheet of deposits is kept. On the last day of every month, per the Excel schedule, after revenue is

¹⁷ Standards for Internal Control in New York State Government, October 2007, page 20.

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reconciled to the deposits sheet, a Treasurer's journal entry is prepared to allocate the revenue to the Treasurer's Office and the Department of Parks, Recreation and Museums using the percentages established by the Law. This allocation is reflected in the Nassau Integrated Financial System ("NIFS").

- In both years, 2009 and 2010, there were differences between NIFS Hotel/Motel revenues and the Treasurer's schedule of Amounts Due, as follows:
 - In 2009, the dollar amount in the Treasurer's Excel schedule, \$3,722,310, was greater than the hotel tax revenue reported in NIFS, \$3,666,233, by \$56,077.
 - In 2010, the dollar amount in the Treasurer's Excel schedule, \$3,881,437, was less than the hotel tax revenue reported in NIFS, \$4,019,150, by \$137,713.

The Treasurer's Office did not perform a reconciliation of the Excel schedule Amounts Due with actual revenues per NIFS.

- An account receivable and the subsequent receipt of a check for \$15,000, from the Nassau Coliseum for entertainment taxes, were misposted in January of 2011 to the NIFS Hotel/Motel Room Tax account for fiscal year 2010. The revenue should have been credited to the NIFS Entertainment Tax revenue account.¹⁸ When this exception was brought to the attention of the Treasurer's Office, a correcting journal entry was immediately prepared and processed.

Audit Recommendation:

Reconciliations should be prepared at least every quarter and definitely at the end of each fiscal year to ensure that receivables are accurately accounted for, and that posting errors are avoided.

Audit Finding (6):

There was an Incorrect Allocation of Revenue between the Treasurer's Office and the Department of Parks, Recreation and Museums for 2010

The Nassau County Hotel and Motel Occupancy Tax Law provides that the revenues resulting from the imposition of the tax shall be used to promote tourism and convention business in Nassau County as well as to provide care, maintenance and interpretation for the general public of certain structures and areas under the jurisdiction of the Nassau County Department of Parks,

¹⁸ NIFS Index Code TRGEN1300, Sub-Object R1192 records Hotel/Motel Tax revenues, while Index Code TRGEN1300, Sub-Object R1194 records Entertainment Tax Revenues.

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Recreation and Museums and for operating or program support of non-profit museums and cultural organizations in Nassau County.¹⁹

The Law provides that 25% of the tax revenues be distributed to tourism promotion and cultural programs and activities.²⁰ The remaining 75% is to be shared between the Treasurer of Nassau County (25%), and the Department of Parks, Recreation and Museums (75%).²¹

Therefore, according to the Law, the Hotel Occupancy Tax revenue allocation between the Department of Parks, Recreation and Museums, and the Treasurer should be 81.25% and 18.75%, respectively, as follows:

Allocation of Hotel and Motel Occupancy Tax				
Revenue Allocation Percentage	Detail of Allocation	Parks, Recreation and Museums	County Treasurer	Total
25%	Tourism Promotion and Cultural Programs	25.00%		25.00%
75%	General Obligations		18.75%	18.75%
	Dept. of Parks, Recreation and Museums	56.25%		56.25%
100%	Totals	81.25%	18.75%	100.00%

On an annual basis (each February), the Department of Parks, Recreation and Museums prepares a schedule showing how the hotel/motel tax revenues of the prior year are to be allocated, in accordance with the Law. The Department forwards a memo to the Comptroller's Office Accounting Section, requesting that they prepare a journal entry to allocate the funds, with the supporting allocation schedule attached. The Accounting Section's staff prepares a journal entry and posts the allocation to NIFS as an adjusting entry each year.

In 2010, revenue of \$12,187 from hotel/motel taxes was incorrectly allocated, due to the incorrect posting of \$15,000 of entertainment tax revenue to the account, as noted in the prior audit finding. The error occurred in NIFS in the allocation of funds in the General Fund between the Department of Parks, Recreation and Museums and the Treasurer's Office.²² The following schedule details the discrepancy:

¹⁹ Nassau County, N.Y., Misc. Laws, Title 24, §1 (1994).

²⁰ Nassau County, N.Y., Misc. Laws, Title 24, §5(A) (1994).

²¹ Nassau County, N.Y., Local Law No.21-2009 §2 (B) (Oct. 5, 2009).

²² In the General Fund, the allocation is recorded in NIFS Sub Object R1192, Index Codes PKGEN1100 and TRGEN1300.

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2010 Hotel/ Motel Occupancy Tax Revenue Allocated					
Department	Allocation per Dept. of Parks, Recreation and Museums		Allocation per Local Laws No.29-2000 and 21-2009		Difference
	Amount	% of Total	Amount	% of Total	
Department of Parks, Recreation, and Museums	\$3,253,372	80.95%	\$3,265,559	81.25%	(\$12,187)
Treasurer	\$765,778	19.05%	\$753,591	18.75%	\$12,187
Total	\$4,019,150	100.00%	\$4,019,150	100.00%	\$0

This discrepancy of \$12,187 meant that the Department of Parks, Recreation and Museums received \$12,187 less than its share of revenues, while the Treasurer's Office received \$12,187 more than its share.

Audit Recommendation:

The Treasurer's Office must perform periodic reconciliations of hotel and motel tax revenue posted to NIFS, particularly at year end, to ensure that the annual allocation of revenues between the Treasurer's Office and the Department of Parks, Recreation and Museums is made correctly.

As noted in the Executive Summary, the Comptroller’s Office and the Treasurer’s Office entered into a MOU on July 21, 2011, authorizing the Comptroller’s Office to perform Hotel and Motel Occupancy Tax audits on behalf of the Treasurer’s Office.

County Law provides for an occupancy tax on all hotels and motels located in Nassau County at the rate of 3% of the per diem rental rate for each room. The owner or operator is responsible for the collection of this tax at the same time that they collect the rent from the occupant.²³ Hotels and motels must register with the Treasurer’s Office and are required to submit quarterly Hotel and Motel Tax Remittance Forms. Some room rentals are exempt from the tax, for example, if a guest is occupying a room for at least thirty (30) consecutive days they are considered to be a permanent resident, and are exempt.²⁴ In addition, guests traveling on behalf of the federal government, New York State or its subdivisions, or organizations established solely for religious, charitable or educational purposes are exempt.²⁵

We reviewed twelve establishments’ books and records for the period January 1, 2009 through December 31, 2010. Our reviews included the following procedures:

- Registration with the Treasurer’s Office was confirmed to Registration Forms on file with the Treasurer’s Office.
- Quarterly Hotel and Motel Tax Remittance Forms were reviewed for accuracy and timely submission and payment.
- Supporting documentation for the computation of the taxes was obtained and reviewed. Invoices were sampled for rental charges.
- Income for exempt room rentals was verified to supporting documentation and the tax exempt status of guests was verified.
- Taxable room revenue used to calculate occupancy tax due was compared to taxable revenues reported to New York State on quarterly sales tax returns.
- Delinquent taxes were identified and their status was followed up with the Treasurer’s Office.

We noted the following findings in our field visits to 12 Nassau County hotels and motels:

Allegría Hotel & Spa

The Allegría Hotel & Spa did not pay any hotel and motel Occupancy Tax, totaling \$112,019, for the four quarters of 2010. According to their external accountant, management was experiencing cash flow problems, and asked if this outstanding amount could be paid in installments. A recent follow-up of the hotel’s payment status with the County Treasurer’s Office indicated that in 2011, the hotel is submitting quarterly Hotel and Motel Tax Remittance Forms, but continuing to fail to pay the taxes.

²³ Miscellaneous Laws of Nassau County, Title 24, Section 3.

²⁴ N.Y. Tax Law §1202-2, Section (1).

²⁵ Miscellaneous Laws of Nassau County, Title 24, Section 6.

Appendix A – Hotels and Motels Audited by the Comptroller’s Office

We reviewed the Hotel and Motel Tax Remittances and supporting documentation of the Allegria Hotel & Spa for the period 2009 and 2010. We noted the following exceptions:

- a) The Allegria Hotel & Spa did not pay Hotel and Motel Occupancy Tax, amounting to \$112,019 for the four quarters of 2010. In addition, \$947 and \$18,629 in penalties and interest for 2009 and 2010, respectively, as of February 1, 2011 and September 30, 2011, respectively, are still outstanding.
- b) The Allegria Hotel & Spa incorrectly calculated the 4th and 1st Quarter exemptions claimed for 2009 and 2010 respectively, resulting in underpayments of Occupancy taxes of \$743.31 and \$173.89, respectively.
- c) The Allegria Hotel & Spa was unable to provide us with the exemptions claimed for the 2nd, 3rd and 4th quarters of 2010. The external accountant said he was unable to get the exemptions from the Allegria Hotel & Spa.

Jones Beach Hotel

The Jones Beach Hotel accrued over \$600,000 in fines for failing to register with the Treasurer’s Office and remit occupancy taxes.

The Treasurer’s Office requires hotels and motels to submit quarterly Hotel and Motel Tax Remittance Forms. The form clearly states that it "must be filed whether or not there is tax to be remitted". We noted the following exceptions during our review of the Jones Beach Hotel:

- a) Since November of 1994, the Jones Beach Hotel failed to register and file hotel and motel Occupancy Tax returns with the Treasurer’s Office. The \$610,400 fine for this failure was calculated from November, 1994 to July 19th, 2011, when it registered. Several letters from the Treasurer’s Office dated June 28, 1995, November 9, 2007, December 8, 2008 and May 27, 2009 were sent informing them of this requirement. It was only at the time of this audit, on July 19, 2011, that the Jones Beach Hotel registered.

The Hotel and Motel Occupancy Tax Law states that "within thirty days after the effective date of this Title, or in the case of owners commencing business after such effective date, within ten days after such commencement or opening, every owner shall file with the County Treasurer a certificate of registration in a form prescribed by the County Treasurer. Failure to register with the County Treasurer as required by this Title shall result in the imposition of a fine of one hundred dollars for each day of non-registration for each hotel or motel not so registered".²⁶

- b) The Jones Beach Hotel did not pay Occupancy taxes of \$1,772 and \$1,930 for 2009 and 2010, respectively. During the time of the audit, in August 2011, these taxes were paid, however, interest and penalties were not included in the payments. As the hotel failed to file

²⁶ Nassau County , N.Y., Misc. Laws, tit. 24, §3 (C) (1994).

Appendix A – Hotels and Motels Audited by the Comptroller’s Office

quarterly Hotel and Motel Tax Remittance forms for the years prior to 2009, it is possible that guests may have been charged for occupancy taxes during these earlier years that were not remitted to Nassau County.

- c) The Jones Beach Hotel was unable to support \$33,850, and \$12,181 in exemptions claimed for years 2009 and 2010, respectively, because of inadequate record keeping.
- d) We requested copies of the Jones Beach Hotel’s New York State quarterly sales tax returns for the period 2009 – 2010, which they failed to provide.

Capri Lynbrook Motor Inn

For the four quarters of 2010, the Capri Lynbrook Motor Inn completed its quarterly Hotel and Motel Tax Remittance Forms incorrectly. Instead of listing the gross income from occupancy of rooms and subtracting income from exempt rentals, the inn listed only the net taxable room rentals. As noted in Audit Finding (2), the Treasurer’s Office generally does not require hotels and motels to submit a written explanation or schedule of exempt income with their tax returns; such a submission would have disclosed this reporting error. There was no dollar impact resulting from the exception.

Long Island Marriott Hotel, Uniondale

No material exceptions were noted.

Marriott Residence Inn, Plainview

No material exceptions were noted.

Inn at Fox Hollow

No material exceptions were noted.

La Quinta Inn & Suites

No material exceptions were noted.

Inn at Great Neck

No material exceptions were noted.

Red Roof Inn, Westbury

No material exceptions were noted.

Glen Cove Mansion & Conference Center

No material exceptions were noted.

Inn at Plainview

No material exceptions were noted.

Plantation Motel Inc.

No material exceptions were noted.

Appendix B – Treasurer’s Response

EDWARD P. MANGANO
COUNTY EXECUTIVE



BEAUMONT A. JEFFERSON
ACTING COUNTY TREASURER

COUNTY OF NASSAU
OFFICE OF THE COUNTY TREASURER
240 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501-4248

April 3, 2012

Ms. Joy M. Watson
Deputy Comptroller for Audits and Special Projects
Nassau County Comptroller’s Office
240 Old Country Road, 2nd Floor
Mineola, NY 11501

Dear Ms. Watson:

We have reviewed the comments and recommendations from the limited review of Nassau County’s Hotel and Motel Occupancy Tax Collections performed by the Comptroller’s Office. This review was requested by former Treasurer John Mastromarino in his memo dated February 24, 2011 where he asked for the assistance of the Comptroller’s Field Audit division in auditing the remittance of hotel/motel taxes. The Comptroller’s office field audit expertise and the lack of adequate staffing in the Treasurer’s office was the key reason for this request. The Treasurer’s Office thanks the Office of the Comptroller for agreeing to assist with the audit. As a result of the audit, new procedures were developed, certificates of authority were re-issued to all hotels and some revenue was collected.

We have reviewed the audit findings and recommendations and following are our responses (*in italics*).

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e-mail: nctreasurer@nassaucountyny.gov
web site: www.nassaucountyny.gov

Audit Finding (1):

The Treasurer’s Office Collection Efforts for Delinquent Hotel/Motel Tax Revenues have been Insufficient

Comptroller’s Audit Recommendation

We noted that there were deficiencies in the Treasurer's Office's collection efforts for delinquent hotel/motel taxes. Department officials advised us that the Treasurer's Office has turned over collection efforts to the Office of the County Attorney since the County Attorney has enforcement authority. However, the Miscellaneous Laws of Nassau County state "Such tax shall be collected and administered by the County Treasurer by such means and in such manner as other taxes which are now collected and administered".²⁷ Therefore, the Treasurer's Office should be ensuring that collection efforts, even if delegated to another department, are ongoing and timely.

We were advised by Treasurer's Office employees that three hotels and motels were delinquent in paying their hotel/motel taxes, and in one instance, a hotel had not paid at all. In the past, the Office of the County Attorney assisted the Treasurer’s Office in collecting hotel/motel taxes from delinquent or non-paying hotels and motels. However, the latest correspondence supporting the County’s collection efforts for three of the four delinquent/non-paying hotels was dated in 2010. Our review noted that no recent follow-up efforts have been made by either the County Attorney’s Office or the Treasurer’s Office.

There have been multiple senior staff changes in both the County Treasurer's Office and the Office of the County Attorney, which may have affected the continuity of delinquent hotel/motel tax collection efforts. The Treasurer's Office does not have written procedures covering the hotel/motel tax revenue collection process, which could provide guidance and time frames on collection efforts. On December 2, 2011 we were advised by the Treasurer’s Office that unpaid hotel/motel taxes will be referred to the County’s collection agency, however, the Treasurer’s Office is in the process of selecting a new collection agency. The Treasurer’s Office also noted that they will develop a procedure for referring delinquent hotel/motel taxes to the collection agency.

Response to Audit Finding (1):

- *We exhausted all means to collect delinquent taxes, and requested that the Comptroller’s Office assist us with on-site audits and collection of revenue.*

²⁷ Nassau County, N.Y., Misc. Laws, Title 24, §3 (B) (1994).

- *The Treasurer’s Office requested assistance from the County Attorney’s Office in drafting correspondence to delinquent hotels/motels. We requested their help to ensure that any correspondence that went out to delinquent remitters, met legal requirements. We did not turn over collection authority to the County Attorney [see Exhibit I for sample letter and correspondence between the Treasurer’s office and County Attorney].*
- *All existing delinquent hotel/motel taxes, including legal action, will be referred to MSB, the County’s newly-hired collection agency. MSB will commence collections for the County in mid- to late- April.*

Auditor’s Follow-up Response:

The Treasurer’s Office has taken steps to address this finding. We reiterate our suggestion that the Treasurer’s Office consider measures that can be taken to improve collection of delinquent taxes, such as requiring hotel/motel operators to file a bond issued by a surety company.

Audit Finding (2):

Inadequate Monitoring of Hotel and Motel Tax Remittances: Only cursory review, no review of supporting documentation

Comptroller’s Audit Recommendation

The Treasurer’s Office should be more proactive in ensuring hotels submit the required supporting documentation for all exemptions claimed, and also perform periodic desk and/or field audits.

Response to Audit Finding (2):

The Treasurer’s Office requested that the Comptroller’s Office conduct field audits and assist us in obtaining supporting documentation and reviewing the hotel/motel owners’ books and records. We continue to fully review the documentation received from hotels/motels. Our request for audit assistance, coupled with the MOU signed on July 21, 2011, made it clear that the Treasurer’s Office needed assistance with the monitoring and review of hotel/motel books and remittances [see Exhibit II]. To ensure compliance with supporting documentation we would need additional staff, and continued assistance from the Comptroller’s Office or another County agency.

Auditor’s Follow-up Response:

We concur that the Treasurer’s Office needs personnel to monitor hotel/motel taxes.

Audit Finding (3)

The Treasurer’s Office failed to issue Certificates of Authority as Required by County Law

Comptroller’s Audit Recommendations:

- a) “Certificates of Authority” should be issued to all registered hotels/motels as soon as possible.
- b) Operators of hotels/ motels should also be instructed to have them displayed “in such a manner that it may be seen and come to notice of all occupants and persons seeking occupancy”.
- c) In addition, the Law, which provides that hotels and motels should obtain a certificate of authority and display the certificate, should be included on the Treasurer’s Office’s website²⁸ The Treasurer’s Office should follow the lead of the City of New York, by prominently noting on its website that hotel and motel operators should display their certificates of authority.

Response to Audit Finding (3):

“Hotels/motels were issued Certificates of Authority in the past. However, no records could be found to support the issuances to all hotels/motels. Therefore, on July 26, 2011, new certificates were issued to all hotels/motels on record, along with a letter instructing the hotels/motels to post the certificates in a location where they could be seen by all hotel occupants and persons seeking occupancy [see Exhibit III].

Nassau County’s website was updated to instruct hotel/motel operators to prominently display the Certificate of Authority.

Auditor’s Follow-up Response:

We concur with the corrective taken by the Treasurer’s Office.

²⁸ Nassau County, N.Y., Misc. Laws, Title 24, §3 (C) (1994).

Audit Finding (4):

There are No Written Procedures for Hotel & Motel Occupancy Tax Collection

Comptroller’s Audit Recommendation:

All aspects of the hotel occupancy tax collection should be clearly documented in an up-to-date procedural manual.

Response to Audit Finding (4):

The Treasurer’s Office presents the attached inter-departmental memo dated December 28, 2006 [Exhibit IV(a)] as proof that procedures were documented for the hotel/motel tax function. Copies of the Local Law 12-1994 and subsequent amendments were also on file to document the process. This memo provides high-level procedural steps for receiving and posting hotel/motel tax.

The Treasurer’s office developed more detail procedures for the function [Exhibit IV(b)]. The new procedural manual fully documents financial transactions relating to posting of revenue, provides financial system screen shots to assist with posting and includes a listing of hotel/motel contacts.

Auditor’s Follow-up Response:

During the audit, the Treasurer’s Office was not able to produce procedures for the auditors. Subsequently, the department located, updated and provided the procedures to the auditors.

Audit Finding (5):

The Treasurer’s Office’s Unreconciled Receivables resulted in a Misposting of Revenue

- In both years, 2009 and 2010, there were differences between NIFS Hotel/Motel revenues and the Treasurer's Schedule of Amounts Due, as follows:
 - In 2009, the dollar amount in the Treasurer's Excel schedule, \$3,722,310, was greater than the hotel tax revenue reported in NIFS, \$3,666,233, by \$56,077.
 - In 2010, the dollar amount in the Treasurer's Excel schedule, \$3,881,437, was less than the hotel tax revenue reported in NIFS, \$4,019,150, by \$137,713.

Response to Audit Finding (5):

The variances listed for 2009 and 2010 are not true variances. The difference between the Excel schedule and the NIFS system is made up of the following: (1) prior year fourth quarter revenues, (2) late fees, and (3) current year fourth quarter revenues. During the audit, this was explained to the auditor. We further explained how to use the Excel (what to add, what to subtract) to prove to the revenue collection totals in the NIFS system. To illustrate, please see Exhibit V: “Response to Audit Finding (5)”. This schedule documents the reconciliation and explains the variance between NIFS and Excel spreadsheets for 2009 and 2010.

- An account receivable and the subsequent receipt of a check for \$15,000, from the Nassau Coliseum for entertainment taxes, were misposted in January of 2011 to the NIFS Hotel/Motel Room Tax account for fiscal year 2010. The revenue should have been credited to the NIFS Entertainment Tax revenue account.²⁹ When this exception was brought to the attention of the Treasurer’s Office, a correcting journal entry was immediately prepared and processed.

Comptroller’s Audit Recommendation:

Reconciliations should be prepared at least every quarter and definitely at the end of each fiscal year to ensure that receivables are accurately accounted for, and that posting errors are avoided.

Response to Audit Finding (5):

Fifteen thousand dollars (\$15,000) were posted, in error, to TRGEN1300, R1192 – Hotel Room – instead of R1194 – Entertainment Tax. This was an error in the categorization of revenue, without impact to the allocation of Hotel/Motel revenue which is done from the GL account. Going forward, NIFS postings will be reconciled to the Excel schedules monthly, quarterly, and at year-end.

Auditor’s Follow-up Response:

During the audit, a \$15,000 misposting was noted that would have been corrected in a timely manner if reconciliations were prepared. The reconciliations serve a purpose and any reconciling items should be clear so an internal review can be performed.

²⁹ NIFS Index Code TRGEN1300, Sub-Object R1192 records Hotel/Motel Tax revenues, while Index Code TRGEN1300, Sub-Object R1194 records Entertainment Tax Revenues.

Audit Finding (6):

There was an Incorrect Allocation of Revenue between the Treasurer’s Office and the Department of Parks, Recreation and Museums for 2010

Comptroller’s Audit Recommendation:

The Treasurer’s Office must perform periodic reconciliations of hotel and motel tax revenue posted to NIFS, particularly at year end, to ensure that the annual allocation of revenues between the Treasurer’s Office and the Department of Parks, Recreation and Museums is made correctly.

Response to Audit Finding (6):

As noted in Audit Finding (5), the Treasurer’s Office acknowledges that an error occurred in the posting of Entertainment Tax. However, this error did not impact the revenue allocation. The revenue (although it was categorized incorrectly) was not posted to GL68, which is the GL account that we use to allocate revenue. Therefore, it was not included in the hotel/motel allocation [refer to the detailed procedures, attached as Exhibit IV(b)].

Auditor’s Follow-up Response:

Reconciliations are currently being performed.

Thank you once again for your support. Please feel free to contact if you have any additional questions or require further clarification.

Sincerely,

Beaumont A. Jefferson

Beaumont Jefferson

Acting County Treasurer

BAJ/sl

cc: Tim Sullivan, Deputy County Executive of Finance
Jo-Ann Greene, Director of Field Audit
Vincent Abbatiello, Assistant Director of Field Audit

EXHIBITS

- I. Collection Letter drafted by County Attorney for use by the Treasurer’s Office to follow up to delinquent Hotel/Motel taxes; along with correspondence between the County Attorney’s Office and the Treasurer’s Office.
- II. Memo from former Treasurer John Mastromarino to Comptroller’s Office requesting Audit assistance.
- III. Sample Certificate of Authority
- IV.
 - a) Inter-departmental procedural memo
 - b) Newly-developed departmental procedures
- V. Reconciliation of Excel schedule vs NIFS for 2009 and 2010.

The exhibits are not included by mutual agreement with the Treasurer’s Office and are on file in the Comptroller’s Office.