

Nassau County
Office of the Comptroller



Review of SMG's (formerly Spectacor Management Group)

Nassau County Entertainment Surcharge Tax Revenue

GEORGE MARAGOS

Comptroller

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

SMG is required to pay Nassau County an Entertainment Surcharge Tax of \$1.50 per seat sold for events at the Nassau Veterans Memorial Coliseum in accordance with Chapter 179 of the Laws of New York 2000, Local Law No. 28-2000. The Nassau County Administrative Code, Article 3a Entertainment Surcharge Regulation¹ allows tax-exempt organizations to be exempt from the tax.

Key Findings:

SMG owes the County a total of \$176,523 for the period January 1, 2012 to March 31, 2014. This amount includes surcharge taxes of \$100,056 related to audit findings on 66,704 seats sold during the audit period, plus penalties of \$50,029 and interest of \$26,438.

- The audit determined that the exemptions from tax claimed by SMG for 65,381 tickets sold were not valid because SMG could not provide the auditors with proof of the organizations' tax exempt status and/or the payments for these tickets were not made directly by the claimed tax-exempt organizations.
- The audit found that another 1,323 tickets were sold but not included on SMG's tax returns.

Key Recommendations:

We recommend that SMG:

- remit the amount owed of \$176,523 to the County in connection with the unsupported tax exemptions for 65,381 seats and the unreported ticket sales for 1,323 seats;
- obtain and retain tax-exempt certificates as proof of tax exempt ticket sales;
- ensure tax exemptions are only given to legitimate charities by verifying the tax-exempt number and organization's name to the charities websites or via telephone; and
- require direct payments from the tax-exempt organization for all tax-exempt tickets sold.

The matters covered in this report have been discussed with the officials of SMG. On March 3, 2015, we submitted a draft letter with the finding to SMG for their review. SMG provided their response on April 20, 2015. Their response and our follow up to their response are included at the end of this report.

¹ Nassau County Administrative Code, Article 3a Entertainment Surcharge Regulations §5-93.0 Exemptions.

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Introduction

Background

The Comptroller's Office has completed its review of SMG's payment of the Entertainment Surcharge Tax for events held at the Nassau Veterans Memorial Coliseum ("Coliseum") managed by SMG, as agent for the New York Islanders Hockey Club.

The Entertainment Surcharge Tax regulation imposes a surcharge tax of \$1.50 per ticket for entertainment events held in Nassau County with a permanent seating capacity of 2,500 seats. The Nassau County Administrative Code, Article 3a Entertainment Surcharge Regulation² also allows tax-exempt organizations to be exempt from the tax. According to New York Tax Law Chapter 179.2 (Section 1202(d)(iii)), "such tax may be collected and administered by the county treasurer or other fiscal officers of Nassau county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law, ordinance or resolution". Collecting this tax in the same manner as other taxes requires the organization to have a valid tax-exempt certificate and be the direct payer of record³ in order to be exempt from taxes. Any person failing to pay the \$1.50 surcharge tax shall be subject to a penalty of fifty percent on the tax amount due plus interest of nine percent per annum, compounded daily on the total tax and penalty amount.⁴

As shown in Exhibit I, SMG sold a total of 842,144 tickets and paid \$1,263,574 to the County for events held at the Coliseum from January 1, 2012 to March 31, 2014.

² Nassau County Administrative Code, Article 3a Entertainment Surcharge Regulations §5-93.0 Exemptions.

³ New York State Department of Taxation and Finance, Publication 843 (12/09), A Guide to Sales Tax in New York State for Exempt Organizations, page 16.

⁴ Nassau County Administrative Code, Article 3a Entertainment Surcharge Regulations §5-104.0.a,b.

Exhibit I

**SMG Entertainment Surcharge Taxes Paid and Tickets Sold
Nassau Veterans Memorial Coliseum
2012 to March 31, 2014**

<u>Year</u>	<u>Tickets Sold</u>	<u>Taxes Paid</u>
2012	361,496	\$ 542,603 ¹
2013	327,485	\$ 491,227
2014	153,163	\$ 229,744
Total	842,144	\$ 1,263,574

¹ In 2012, calculation of taxes for tickets sold was 361,496 x \$1.50 = \$542,244 plus the Trans Siberian 2012 tax adjustment of \$358.50.

Audit Scope, Objectives, and Methodology

The objective of the audit was to review the entertainment tax revenues collected by the Office of the Nassau County Treasurer to ensure that the taxes were computed correctly, remitted in a timely manner, and properly recorded in the County’s accounting system, the Nassau Information Financial System (“NIFS”). The review period was from January 1, 2012 to March 31, 2014.

The auditors selected tax-exempt tickets sold for 10 months during the scope period based on total taxes and tested for compliance with tax-exempt guidelines. In addition, all the months that reported taxes paid on the number of complimentary tickets issued for each event were also reviewed. The tax returns submitted by SMG were compared to Ticketmaster reports⁵ and complimentary tickets were verified to contract agreements. We also traced the revenues received to NIFS to ensure the amounts were correctly recorded in the appropriate general ledger account. We tested for timeliness of submission of tax returns and for collection of interest and penalties if returns were not submitted promptly.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

⁵ Ticketmaster reports are used by the event operators to record all tickets sold and complimentary tickets issued for all events listed on the tax returns.

Findings and Recommendations

Audit Finding (1):

SMG Did Not Pay Entertainment Surcharge Tax on All Tickets Sold and Improperly Allowed Exemptions

Our review found that SMG owes the County a total of \$176,523 for 65,381 tickets issued to tax-exempt organizations that did not have proof of exemption and also for 1,323 tickets sold that they did not remit the tax on for the period January 1, 2012 to March 31, 2014. (Refer to Exhibit II).

Tickets issued to government agencies, corporations, associations or trusts operated exclusively for religious, charitable, or educational purposes are exempt from the surcharge tax. We examined ticket records from January 1, 2012 to March 31, 2014 and found that SMG did not properly follow the tax exemption guidelines. An organization requesting tax-exempt status on the purchase of tickets, per NYS, must “provide vendors with a properly completed ST-119.1, Exempt Organization Purchase Certificate and the organization must be...the direct payer of record.”⁶

SMG could not provide the auditors with these certificates. Instead, SMG provided Excel worksheets that showed the tax-exempt organization, the amount of tickets, a tax-exempt number and the payer name as support for the tax-exempt tickets in our test sample. The auditors compared the data on the Excel worksheets to the IRS tax-exempt database⁷ and to the New York State Charities Bureau Registry Search (“Charities Bureau”) website.⁸ Secondly, the auditors verified that NYS tax guidelines were followed, which required payments made using cash, a check or a debit or credit card in the name of the organization itself. “An Employee, officer, or agent of the organization may not use a personal check or personal debit or credit card to make tax-exempt purchases on behalf of the organization, even if that person will later be reimbursed by the organization.”⁹

The auditors reviewed all group ticket sales for 2012, 2013 and 2014 from the Excel worksheets and determined that only 827 tickets qualified for tax exemption status (based on the requirements that the organization is a verifiable charity, the organization’s tax-exempt certificate was provided, and the payer of record matched the name of the organization).

⁶ New York State Department of Taxation and Finance, Publication 843 (12/09), A Guide to Sales Tax in New York State for Exempt Organizations, page 16.

⁷ IRS Organizations Eligible to Receive Tax-Deductible Charitable Contributions Publication 78 database.

⁸ New York State Office of the Attorney General Charities Bureau Registry Search website <http://www.charitiesnys.com/home.jsp>.

⁹ New York State Department of Taxation and Finance, Publication 843 (12/09), A Guide to Sales Tax in New York State for Exempt Organizations, page 16.

Findings and Recommendations

The auditors also found that SMG's tickets for the Long Island Boat and the Fire (EMS) shows (held in the exhibition hall) were not always listed on the tax returns but were classified as tax-exempt. SMG did not provide valid tax-exempt certificates for the two promoters of these shows that contracted with SMG to hold them at the Coliseum. SMG provided a tax-exempt certificate from the Friends of Islip Town Firefighters, Inc. for the Fire (EMS) show that did not have a valid tax-exempt number although the auditors found the organization's name on the Charities Bureau website.

In conclusion, SMG did not verify the tax-exempt numbers on the certificates to the aforementioned charities' websites to ensure the organization was properly exempt from the County Entertainment tax and also did not require payment for tickets to be made directly by the organization itself. As a result, 65,381 tax-exempt tickets SMG claimed during the audit period are subject to the surcharge tax, penalty and interest totaling \$173,066 owed to the County.

Also, on a test sample basis, the auditors examined and compared the tickets reported to the County on the tax returns to both the corresponding Ticketmaster reports and to the event contract agreements. This examination found an additional 1,323 tickets not reported on the tax returns to the County for which SMG owes surcharge taxes of \$3,457 to the County.

Exhibit II summarizes the surcharge taxes SMG owes the County for the scope period:

Findings and Recommendations

Exhibit II

SMG
Taxes Owed to County
January 1, 2012 through March 31, 2014

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>Total</u>
Tickets Not Reported on Tax Return	1,231	39	53	1,323
Unsupported Tax Exempt Tickets^{1, 2}	23,746	23,239	18,396	65,381
Total Tickets	<u>24,977</u>	<u>23,278</u>	<u>18,449</u>	<u>66,704</u>
Entertainment Tax Due (\$1.50 per Tickets Sold)	\$ 37,465	\$ 34,917	\$ 27,674	\$100,056
Penalty for Non Payment of Taxes @ 50%³	18,733	17,459	13,837	50,029
Interest to Date (9% Compounded Daily)³	14,829	8,627	2,982	26,438
Total Amount Due	<u>\$ 71,027</u>	<u>\$ 61,003</u>	<u>\$ 44,493</u>	<u>\$176,523</u>

¹Tax Exempt tickets include the Long Island Boat and Fire EMS shows held in the exhibition arena of Nassau Coliseum.

² Unsupported Tax Exempt Tickets is adjusted for 827 tickets found on the charity bureau website and the organization was the direct payer of record.

³ Interest to date was calculated from tax return due date through January 2, 2015.

Audit Recommendations:

We recommend that SMG:

- a) remit the surcharge tax of \$176,523 to the County for the unremitted tickets sold and the tax-exempt tickets missing the required support documents;
- b) ensure tax exemptions are only given to legitimate charities by verifying the tax-exempt number and organization's name to the charities websites or via telephone;
- c) require direct payments from the tax-exempt organization for all tax-exempt tickets issued; and
- d) obtain and retain tax-exempt certificates as proof for tax exemption of tickets.

**Appendix A - SMG Response to the Findings of the Review of
Nassau County's Entertainment Surcharge Tax Revenue**



JoAnn Greene, MBA CPA
Director of Field Audit
Nassau County Comptroller's Office
240 Old Country Road
Room 207
Mineola, NY 11501

Dear Ms. Greene:

We are in receipt of the Comptroller's draft letter (the "Letter") concerning its review of the Nassau County's Entertainment Surcharge Tax (the "Tax") Revenue for Nassau Veterans Memorial Coliseum (the "Nassau Coliseum"). SMG is the retained manager of the Nassau Coliseum as agent for the building lessee and operator, New York Islanders Hockey Club, LP, and writes to respond to the Letter.

As an initial note, the Letter incorrectly sets forth the standard for establishing exemption from the Tax under both applicable law and past precedent. As you are aware, Nassau County's authority to establish an "entertainment surcharge" tax is established pursuant to NY Tax Law §1202(d), and the tax itself is established under Nassau County Administrative Code, Art. 3, §§ 5-79.0 to 5.84.0 (the "Code"). An exemption (the "Exemption") to the Tax is set forth in the implementing regulations, at § 5-93.0(d), for charitable organizations. State law, the Code, and the implementing regulations do not establish any Nassau County "exemption guidelines" as the term is used in the Letter.

In particular, none of the NY State Tax Law, Nassau County Code, or the implementing regulations establishes as a requirement any of the following conditions that have been adopted for the first time for purposes of this particular audit: i) a prior completed ST-119.1, ii) verification against charity registries, and iii) the exempt organization itself is identified as the "direct payer".

Appendix A - SMG Response to the Review of the Nassau County's Entertainment Surcharge Tax Revenue Letter

To the contrary, it is apparent that tax exempt status is a legal status that may exist independent of these elements, and indeed, past auditors have considered sufficient evidence of tax-exempt status that does not satisfy each of the elements. In fact, it is our belief that the Comptroller has never before invoked inapposite pamphlets and technical requirements to justify imposition of the Tax in a case in which the Exemption would otherwise apply. Indeed, SMG's practices with respect to the Exemption fully conform to past practice as validated by past auditors, and SMG was justified in continuing to rely upon and follow these previously-validated practices. The auditor's current approach introduces technicalities that would render the Exemption process impracticable, and thus severely undermine the philanthropic purpose of the Exemption.

As an initial note, it is apparent that the auditor seized on asserted technicalities to disallow 98.6% of the Exemption claims. It is apparent that the auditor failed properly to identify the event sponsors, resulting in wholesale disqualification for a large number of events for which tax-exempt certificates were in fact produced. After the certificates were provided, most of these claims were disallowed on an alternative technical and improper ground that the "direct payer" on behalf of the organization was not the organization, itself. Again, this is a technical objection, which does not go to the merits of the Exemption claim, and has been rejected by past auditors and is thus inconsistent with past practice. SMG notes that it routinely makes tax exempt purchases for the County, which in turn denies any sales tax that is included in billing despite the fact that SMG administered the purchase.

1. Girl Scouts, Boy Scouts and School Districts: The Exemption is obviously intended to apply to organizations like the Girl Scout and Boy Scouts and education districts, and their events have always been treated as exempt by past auditors, even in situations where the rental check was tendered on behalf of the exempt organization by an agent or third-party. There has never been any prohibition on the payment by a different payer on behalf of such organizations, and as a practical matter, this is how such organizations function. SMG has produced exemption certificates from Nassau/Suffolk Girl Scouts, Boy Scouts, etc., and it is obvious that these organizations are duly organized and qualified charities within the specific contemplation of the Exemption.
2. Friends of Islip Town Firefighters, Inc.: This event occurs in the Exhibition Hall, which is not a part of the Arena and has no seating, and is therefore not subject to the Tax. Further, we note that this event has always been treated as exempt by past auditors. As an additional matter, even if the Tax does apply, SMG has produced sufficient proof that the event is for the benefit of the Town of Islip Fire Department, which the auditor in fact located on the Charities Bureau website.

**Appendix A - SMG Response to the Review of the
Nassau County's Entertainment Surcharge Tax Revenue Letter**

3. Long Island Boat Show: Like the Firefighter event, this event occurs in the Exhibition Hall, which is not a part of the Arena and has no seating, and is therefore not subject to the Tax. Further, this event has always been treated as tax-exempt, and SMG produced a letter sufficiently proving tax-exempt status (the organization supports educational purposes).

In summary, it is SMG's position that the operator has observed all requirements of the law in accordance with past practice, and has properly collected all Tax with the exception of, at most, 1824 tickets, which tax liability is more than offset by the payment of taxes with respect to Exhibition Hall events which are not subject to the Tax.

Best regards,



Dawn Culhane
Director of Finance
Nassau Coliseum

Appendix B - Auditor's Follow Up to SMG's Response to the Review of the Nassau County's Entertainment Surcharge Tax Revenue

Auditor's Follow Up:

We reiterate that SMG should remit the surcharge taxes of \$176,523 to the County for the 66,704 tickets not reported on the tax return.

SMG should issue tax-exempt tickets only to legitimate charity organizations that have valid tax-exempt certificates and are paid directly by the organization itself.

New York Tax Law Chapter 179.2¹⁰ states taxes may be collected in such means or manner as other taxes now collected and administered, or as provided by such local law, ordinance or resolution. Therefore tickets sold to tax-exempt organizations are required to comply with the New York State tax-exempt guidelines¹¹. SMG did not require valid documentation before exempting ticket purchasers from the County Entertainment Tax. Its practice of allowing tickets to be tax-exempt based on an organization's "assumed" tax-exempt status without proper documentation (current Tax Exempt Certificate) and without the corresponding payment being made in the name of the organization is not acceptable.

*The group sales records kept by SMG (tax-exempt Excel files) were sent to the auditors. The auditors' review of these records found that the payer of record did not match the group name (a requirement for sales tax exemption) **for 83% of the group sales**. In most cases, the payer of record was an individual, and there was no indication that this individual had any affiliation with the charitable organization. This discrepancy accounted for the largest number of disallowances. The tax-exempt guidelines require payments be made directly by the organization itself in order to be tax exempt.*

SMG's record keeping and verification procedures for tax-exempt tickets lacked detail and consistency. We noted the tax-exempt Excel files provided by SMG were poorly maintained and found SMG did not verify the validity of their tax-exempt sales. For example, the Excel files listed group names with no description (i.e. "2680959", "None"), tax ID numbers that could not be verified, and in some instances the tax ID numbers were missing entirely. The auditors found that SMG did not have controls in place to monitor the validity of tax-exempt certificates and ensure that payments were made directly by the organization itself to support the tax exemptions.

With respect to the two promoters of the Long Island Boat and the Fire (EMS) shows that held events at the Exhibition Hall, the auditors found that events at the Exhibition Hall were subject to the surcharge tax, and neither promoter was a tax-exempt organization. Again, the past practice of allowing tax exemptions on tickets sold to certain organizations and events does not

¹⁰ New York Tax Law Chapter 179.2 (Section 1202(d)(iii)).

¹¹ New York State Department of Taxation and Finance, Publication 843 (12/09), A Guide to Sales Tax in New York State for Exempt Organization, page 16.

Appendix B - Auditor's Follow Up to SMG's Response to the Review of the Nassau County's Entertainment Surcharge Tax Revenue Letter

preclude SMG from compliance with the Nassau County Administrative Code and the New York State tax law and guidelines.