

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Circle Line-Statue of Liberty Ferry, Inc., With Its License Agreement and Payment of Fees Due

FM07-132A

April 14, 2008



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Circle Line-Statue of Liberty Ferry, Inc., with its license agreement with the Department of Parks and Recreation.

Under the provisions of the agreement, Circle Line-Statue of Liberty Ferry, Inc., is required to pay the City fees based on reported gross receipts derived from the ferry service operation at Battery Park. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from Circle Line-Statue of Liberty Ferry, Inc., and the Department of Parks and Recreation, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Compliance of
Circle Line-Statue of Liberty Ferry, Inc.,
With Its License Agreement and Payment of Fees Due**

FM07-132A

AUDIT REPORT IN BRIEF

This audit determined whether Circle Line-Statue of Liberty Ferry, Inc., (Circle Line) accurately reported its gross receipts, properly calculated the license fees due, paid its license fees on time, and complied with certain other major non-revenue terms of the license agreement.

On December 8, 1992, the City of New York (City) through the Department of Parks and Recreation (Parks), entered into a 12-year license agreement with Circle Line to operate an excursion ferry service to Liberty Island and Ellis Island, both part of the National Park Service, and other sightseeing cruises departing from Battery Park, Manhattan.¹

Although the license agreement expired on March 31, 2004, Parks issued several short-term permits for Circle Line to continue operating at Battery Park. The last short-term permit expired on December 31, 2007. On January 1, 2008, a new concessionaire began operating ferry service between Liberty Island, Ellis Island, and Battery Park.

Under the terms of the agreement and permits, Circle Line is required to pay the City the greater of 7 1/4 percent of gross receipts or a minimum annual fee of \$500,000 for operating years 2005 to 2007 (April 1, 2004, to March 31, 2007). The minimum annual fee or the percentage fee is payable on or before the 20th day of each month. A monthly 2 percent penalty is charged for amounts 15 days overdue. In addition, Circle Line is required to:

- maintain a \$50,000 security deposit with the City,
- carry proper insurance coverage and name the City as an additional insured,
- submit monthly and annual gross receipts statements to Parks, and
- pay all required taxes.

¹ Circle Line also operates ferry service to Liberty Island and Ellis Island from Liberty State Park, New Jersey. However, New Jersey ferry service revenue is excluded from the revenue reported under the agreement with the City.

During operating year 2007 (April 1, 2006, to March 31, 2007), Circle Line reported \$28,479,886 in gross receipts and paid \$2,064,792 in license fees.

Audit Findings and Conclusions

Circle Line generally adhered to the provisions of its agreement. Specifically, Circle Line paid its fees on time, maintained the required property and liability insurance, and contributed the \$50,000 as security deposit to the City.

However, Circle Line did not pay all of its required fees to the City. Circle Line owes:

- \$14,517 in percentage fees for underreported gross receipts of \$200,233;
- \$102,124 in percentage fees for unreported handling fees (\$1.75 per ferry ticket) of \$1,408,601 associated with advance purchases made through the Internet or by telephone for operating years 2005 to 2007 (April 1, 2004, to March 31, 2007);
- \$432 in percentage fees for minor recording errors with a net dollar value of \$5,962;
- \$1,098 in percentage fees for a \$15,147 deduction to gross receipts without supporting documentation; and
- \$68,237 in late charges based on \$118,171 in additional fees due.

Circle Line also did not submit its 2005, 2006, or 2007 certified annual gross receipts statements to Parks in a timely manner. In addition, Circle Line did not file commercial rent tax returns for tax years 2006 and 2007 and excluded the license fees paid to the City when calculating the tax due since tax year 2005. Consequently, Circle Line may owe the City \$236,308 (exclusive of interest and penalties) in commercial rent tax.²

As a result of the audit exceptions noted, Circle Line owes \$422,716 in additional license fees, late charges, and commercial rent tax.

Audit Recommendations

The audit recommended that Circle Line should:

- Pay \$186,408 in additional license fees and late charges to the City.

² Commercial rent tax is imposed on tenants who occupy or use premises for the purpose of carrying on any trade, business, profession, or commercial activity south of the centerline of 96th Street in Manhattan.

- Calculate and pay additional fees due that result from unreported handling fees for the period covering April 1, 2007, to December 31, 2007.
- Contact the Department of Finance and seek a final determination with regards to the commercial rent tax and any interest and penalties due for tax years 2005 to 2007.

Parks should:

- Ensure that Circle Line pays the \$186,408 in additional license fees and late charges, and any additional fees that result from unreported handling fees covering the period April 1, 2007, to December 31, 2007. If the outstanding balance is not paid, Parks should use Circle Line's \$50,000 security deposit and seek legal action to recoup the difference.
- Coordinate efforts with the Department of Finance to pursue collection of commercial rent tax and any additional interest and penalties that Finance may assess.

INTRODUCTION

Background

On December 8, 1992, the City through Parks entered into a 12-year license agreement with Circle Line to operate an excursion ferry service to Liberty Island and Ellis Island, both part of the National Park Service, and other sightseeing cruises departing from slips 3, 4, and 5 in Battery Park, Manhattan. Slip 3 is primarily used by Harbor Cruises, LLC (Harbor Cruises), a wholly owned subsidiary of Circle Line, for a one-hour non-stop sightseeing cruise.³

Although the license agreement expired on March 31, 2004, Parks issued several short-term permits for Circle Line to continue operating at Battery Park. The last short-term permit expired on December 31, 2007. On January 1, 2008, a new concessionaire began operating ferry service between Liberty Island, Ellis Island, and Battery Park.

Under the terms of the agreement and permits, Circle Line is required to pay the City the greater of 7 percent of gross receipts or a minimum annual fee of \$300,000, payable in 12 equal monthly installments, in each operating year until March 31, 2004. For operating years 2005 to 2007 (April 1, 2004, to March 31, 2007), Circle Line is required to pay the greater of a minimum annual fee that escalated to \$500,000 or a percentage of gross receipts that escalated to 7 1/4 percent. The minimum annual fee or the percentage fee is payable on or before the 20th day of each month. A monthly 2 percent penalty is charged for amounts 15 days overdue. In addition, Circle Line is required to:

- maintain a \$50,000 security deposit (in cash or negotiable instrument) with the City,
- carry proper insurance coverage, including a \$5 million general liability insurance policy naming the City as an additional insured,
- submit monthly and annual gross receipts statements to Parks, and
- pay all required taxes.

During operating year 2007 (April 1, 2006, to March 31, 2007), Circle Line reported \$28,479,886 in gross receipts and paid \$2,064,792 in license fees.

Objectives

The audit's objectives were to determine whether Circle Line:

- accurately reported its gross receipts, properly calculated the license fees due the City, and paid its license fees on time; and

³ Harbor Cruises, LLC operates various sightseeing cruises from Battery Park and South Street Seaport.

- complied with certain other major non-revenue terms of the license agreement (i.e., maintained the required security deposit, maintained the required insurance, paid all taxes and submitted the required reports).

Scope and Methodology

The scope period of this audit was operating year 2007 (April 1, 2006, to March 31, 2007). However, for the area that Circle Line did not report handling fees associated with purchasing advance tickets to the City, we extended our testing to include operating years 2005 and 2006 (April 1, 2004, to March 31, 2006). To achieve our audit objectives, we reviewed and abstracted the license agreement between Parks and Circle Line and permits issued by Parks. We also reviewed the Parks correspondence, revenue reports, and other relevant documents pertaining to Circle Line. We analyzed the Parks concessionaire ledger for the amounts that Circle Line reported and paid to the City, and checked whether payments were made on time. We also determined whether Circle Line submitted its annual gross receipts statements to Parks in a timely manner.

To obtain an understanding of Circle Line's operations and internal controls over its gross receipts, we:

- interviewed Circle Line officials, such as the Controller, Director of Operations, Director of Concessions, and Call Center Manager;
- reviewed the computerized point-of-sales ticketing system (Gateway) manual to gain an understanding of the controls over the recording of ferry ticket revenue for Liberty Island and Ellis Island;
- conducted unannounced observations of the ticket sales, ferry services, and concession operations;
- conducted a walk-through of the ferry service and ticket sales operations;
- observed the close-out process of ticket sales at the Circle Line Castle Clinton ticket office in Battery Park;
- observed the close-out process of concessions on one of the vessels; and
- documented our understanding of the operations through written narratives and flow charts.

To determine the reliability of the reports generated from the Gateway computer system, we obtained Circle Line's daily sales journals (journals indicate tickets processed at each terminal) for May 23, 2007, the date we conducted our unannounced observation, and traced the ticket numbers on the tickets we purchased to the sales journals. We then traced the ticket sales from the sales journals to Circle Line's "Income Statements" (individual daily summary revenue reports by terminal) and then to the "Concentrator Report" (a daily summary report of ticket

revenue for all terminals). We traced the sales amounts to the general ledger to determine whether revenue was properly recorded. We also reviewed each sales journal to determine whether tickets sold were sequentially numbered by the Gateway computer system. We also reviewed the deposit records (i.e., deposit slips), credit card statements, and bank statements to determine whether gross receipts were properly deposited and recorded.

To determine whether Circle Line properly recorded ticket revenue, we compared gross receipts for ferry ticket revenue reported on the Concentrator Reports for May 2006 to the general ledger. May 2006 was randomly selected by using the Statistical Sampling System software.

To determine whether Circle Line properly recorded charter sales revenue, we traced the revenue and payments from all charter contracts for operating year 2007 to the general ledger. We also contacted the concessionaires on Liberty Island and Ellis Island, and National Park Service officials to independently verify the name and date of each event that was held on the islands and compared the information with the contracts provided by Circle Line.

For the Harbor Cruises operation, we performed a limited review of the revenue generated at Battery Park. On May 21, 2007, we observed Harbor Cruises's operation, without informing Circle Line's officials. We traced the revenue recorded on Harbor Cruises's daily summary report of ticket sales (i.e., batch report) pertaining to slip 3 at Battery Park to the Harbor Cruises general ledger to determine whether the revenue was accurately recorded. We did not assess Harbor Cruises's internal controls over its revenue or perform detailed testing of the ticket revenues generated at Battery Park because the revenue represented only 4 percent of the total reported revenue in operating year 2007. We also reviewed all Harbor Cruises's charter contracts for operating year 2007 and found that there was only one charter departing from Battery Park. We then traced the charter revenue to the general ledger to determine whether Harbor Cruises properly recorded its revenue.

To ascertain the accuracy of the financial statements, we traced each revenue and expense account balance from the general ledger to the certified consolidated financial statements for calendar year 2006. In addition, we compared the revenue generated from the operations at Battery Park to the amounts reported on the monthly gross receipts reports submitted to Parks to determine whether Circle Line accurately reported its revenue.

Finally, we determined whether Circle Line complied with certain major non-revenue terms of its agreement (i.e., posted the required \$50,000 security deposit with the City and properly maintained insurance coverage). We also reviewed the commercial rent tax filings to ascertain whether Circle Line properly paid its commercial rent tax.

The results of these audit tests were not projected to all of Circle Line's gross receipts; nevertheless, in conjunction with our review of internal controls, they provided us with a reasonable basis to evaluate the appropriateness of the amounts reported and fees paid to the City.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered

necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with Circle Line and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference held on January 4, 2008. On January 9, 2008, we submitted a draft report to Circle Line and Parks officials with a request for comments. On January 24, 2008, we received written responses from Circle Line and Park officials.

Circle Line officials disagreed with most of our findings and recommendations. Circle Line claimed that \$24,450 of the \$200,233 in underreported gross receipts assessed were generated from a cruise departing from South Street Seaport, not from the licensed premises associated with the assessment of license fees; that \$1,408,601 in handling fees for purchases made through its call center should not be reported to Parks because the call center is not at the licensed premises; and that the taxes paid on Forms CT-184 and CT-184M should be deducted from the gross receipts because those taxes are solely based upon gross sales revenue. Circle Line also disagreed that any late charges should be assessed, contending that the underreporting of revenue and corresponding assessment of license fees in the audit report are due to differences in interpreting the license agreement. Circle Line further stated that it is exempt from paying commercial rent tax because Circle Line boats are used in interstate commerce so the license fees paid to the City would not be subject to commercial rent tax. Finally, Circle Line did not contest the reporting errors related to incorrectly recorded ticket revenue totaling \$8,929; ticket revenue not posted to the general ledger totaling \$16,597; an unsupported adjustment of \$15,147; and overstated gross receipts totaling \$19,564.

Contrary to the response of Circle Line officials, Parks officials agreed with the findings and recommendations contained in the audit report, including our interpretation of the license agreement that resulted in the major part of the underreported gross receipts. Parks responded that it issued a Notice to Cure requiring Circle Line to remit \$186,408 in additional license fees and late charges to Parks and submit a statement of gross receipts covering unreported handling fees for the period from April 1, 2007, to December 31, 2007, along with the remission of the audit assessment. In addition, Parks's Director of Concession Audits is to follow up with the Department of Finance to ensure that Circle Line resolves the issue of commercial rent tax liability.

The specific issues raised by Circle Line and our rebuttals are included in the body of this report. The full texts of the responses received from Circle Line and Parks are included as addenda to this report.

FINDINGS

Circle Line generally adhered to the provisions of its agreement. Specifically, Circle Line paid its fees on time, maintained the required property and liability insurance, and contributed the \$50,000 as security deposit to the City.

However, Circle Line did not pay all of its required fees to the City. Circle Line owes:

- \$14,517 in percentage fees for underreported gross receipts of \$200,233;
- \$102,124 in percentage fees for unreported handling fees (\$1.75 per ferry ticket) of \$1,408,601 associated with advance purchases made through the Internet or by telephone for operating years 2005 through 2007;
- \$432 in percentage fees for minor recording errors with a net dollar value of \$5,962;
- \$1,098 in percentage fees for a \$15,147 deduction to gross receipts without supporting documentation; and
- \$68,237 in late charges based on \$118,171 in additional fees due.

Circle Line also did not submit its 2005, 2006, or 2007 certified annual gross receipts statements to Parks in a timely manner. In addition, Circle Line did not file commercial rent tax returns for tax years 2006 and 2007 and excluded the license fees paid to the City when calculating the tax due since tax year 2005. Consequently, Circle Line may owe the City an additional \$236,308 (exclusive of interest and penalties) in commercial rent tax.

As a result of the audit exceptions noted, Circle Line owes \$422,716 in additional license fees, late charges, and commercial rent tax, as shown in Table I, following.

Table I

Schedule of Additional Fees, Late Charges, and Commercial Rent Tax Due

Additional Fees and Charges From			Total Amount
Underreported Gross Receipts	\$ 14,517		
Unreported Handling Fees	102,124		
Minor Recording Errors	432		
No Documentation to Support Deduction to Gross Receipts	<u>1,098</u>		
Total Additional Fees	118,171		
Late Charges	<u>68,237</u>		
Subtotal of Additional Fees Plus Late Charges		\$186,408	
Commercial Rent Tax		<u>236,308</u>	
Total Amount Due			\$422,716

These matters are discussed in further detail in the following sections of this report.

Circle Line Underreported Gross Receipts by \$1,629,943 Resulting in \$118,171 in Additional Fees It Owes the City

Circle Line underreported \$1,629,943 in gross receipts for operating years 2005 through 2007 and did not correctly calculate the amount of license fees due the City. We found that:

- \$200,233 in gross receipts was recorded for operating year 2007 on Circle Line’s general ledger but not reported in the gross receipts reports submitted to Parks.

Circle Line Response: “Included in the underreported gross receipts of \$200,233, \$24,450 was related to a July 4, 2006 cruise on the Zephyr harbor cruise out of South Street Seaport which was not subject to the license fees. This cruise did not use the property associated with the license fees.”

Auditor Comment: With regard to the \$24,450 of underreported gross receipts generated from the July 4, 2006 Zephyr harbor cruise, Circle Line provided no supporting documents (i.e., ticket sales records) to substantiate its claim. Moreover, our review found that Circle Line offered two cruises on July 4, 2006—one on the Zephyr departing from the South Street Seaport and the other on Miss New York, departing from Battery Park. The revenue from each cruise was recorded in separate accounts. However, the revenue derived from the Miss New York, which departed from the license premises (i.e., Battery Park), was not included within the gross receipts statement submitted to Parks. Therefore, the \$24,450 should not be excluded from our assessment of underreported gross receipts.

- Circle Line did not report \$1,408,601 in handling fees (service charges) that was charged to the customers who purchased advance tickets on the Internet or by telephone for operating years 2005 through 2007.

Circle Line Response: “The majority of the asserted underreported revenue, \$1,408,601, reflects handling fees for advance purchases made through the call center by Circle Line’s reservation office and through the internet for the period April 1, 2004 to March 31, 2007. Those fees were to reimburse Circle Line for the costs of operating its reservation service as required by the National Park Service. . . . Since these services were not rendered on property covered by the license, Circle Line was not subject to the license fees on its handling charges because the service is provided outside the licensed premises. Picking up the ticket at the window at Castle Clinton, which was not a licensed premise, is not ‘incidental’ to the overall purchase.”

Auditor Comment: We disagree with Circle Line’s contention that handling fees should be excluded from gross receipts because the call center is not located at the licensed premises. Handling fees are associated with ferry ticket sales, which resulted from the indirect revenue from the use of the licensed premises. Article 2.0 c) i) of Circle Line’s license agreement clearly provides that indirect sales associated with the license agreement, whether or not transacted on the licensed property, are to be included in gross receipts reported to Parks, and license fees are to be applied. It should also be noted that in the Parks response to this audit, Parks agreed with our interpretation of the license agreement on this point of underreporting handling fees. Therefore, we contend that the \$1,408,601 should not be excluded from our assessment of underreported gross receipts.

In addition, our review of Circle Line’s books and records for operating year 2007 disclosed the following errors:

- Revenue associated with ticket sales was underreported because \$8,929 in revenue was incorrectly recorded as New Jersey ticket revenue;
- Ticket and charter revenue totaling \$16,597 was recorded on the daily summary report of ticket revenue (Concentrator Report) or charter contracts but not posted to the general ledger;
- Gross receipts of \$19,564 were overstated. Charter revenue of \$5,513 should have been reported as revenue earned from Circle Line’s Harbor Cruises South Street Seaport operation, \$13,498 of New Jersey ticket revenue was incorrectly recorded as New York ticket revenue, and \$553 in charter revenue should have been recorded as sales tax. Under the agreement, gross receipts are to be excluded from the amount of any federal, State, or City tax to be paid by the licensee against its sales; and
- Group sales revenue was reduced by \$15,147 without any documentation to support the adjustment.

Based on the exceptions noted, we calculated the amount of license fees due and found that Circle Line owes the City \$118,171 in additional license fees, as shown in Table II, following.

Table II

Schedule of Additional Fees Due

Description	Amount Due
Underreported Gross Receipts	\$ 200,233
Unreported Handling Fees	1,408,601
Incorrectly Recorded Ticket Revenue	8,929
Revenue Not Posted to the General Ledger	16,597
Unsupported Adjustment	15,147
Less: Overstated Gross Receipts	<u>(19,564)</u>
Total Underreported Gross Receipts	\$1,629,943
Additional Fees Due (\$1,629,943 x 7.25%)	\$ 118,171

\$68,237 in Late Charges Due

According to Article XXXV of the agreement, Circle Line is required to pay the City late charges as follows:

“In the event that payment of license fees, percentage fees or other charges shall become overdue for fifteen (15) days beyond the date on which it is due and payable as provided in this license, a late charge of two percent (2%) per month (computed on a thirty (30) day month) from the date it was due and payable on the sums so overdue shall become immediately due and payable to Commissioner as liquidated damages for the administrative cost and expenses incurred by Commissioner by reason of Licensee’s failure to make prompt payment and said late charges shall be payable by Licensee without notice or demand. If the late fee and all arrears (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment.”

Based on the \$118,171 in additional fees owed, we calculated that as of January 19, 2008, Circle Line owes the City an additional \$68,237 in late charges. (See Appendix for the calculation of late charges.)

Circle Line Response: “Circle Line has adhered to the provisions of their agreement with the City of New York. The proposed additional fees are due to a difference in interpreting the contract and not due to a willful neglect of the terms. Therefore, Circle Line feels that no interest or penalty should be charged.”

Auditor Comment: Circle Line’s claim that the underreported gross receipts are attributable to a difference in interpretation of the agreement and not to willful neglect of the terms in the license agreement is not sufficient justification to waive the assessment of late charges. Article XXXV of Circle Line’s agreement states that in the event that payment of license fees, percentage fees, or other charges become overdue, a late charge

of two percent (2%) per month (computed on a 30-day month) from the date it was due and payable become immediately due. Clearly, Circle Line's interpretation of the agreement differs from that of the Comptroller and Parks. As previously discussed and stated in the Parks response, Circle Line did not pay the City in accordance with the terms of the agreement and is therefore required to pay the City a late charge as assessed in this report.

Late Submission of Certified Annual Gross Receipts Statements

Circle Line does not submit its certified annual gross receipts statements to Parks in a timely manner. According to §4.2 of the agreement, Circle Line is required to submit its annual gross receipts statement certified and signed by a Circle Line officer within 45 days after the end of each operating year. Since Circle Line's Battery Park and Harbor Cruises operating years end March 31, Circle Line is required to submit a certified annual gross receipts statement on or before May 15.

The certified annual gross receipts statements for operating years 2005, 2006, and 2007 for Circle Line and Harbor Cruises were submitted to Parks on July 12, 2007, after Parks sent Circle Line a Notice To Cure on June 27, 2007.

Other Issue

\$236,308 in Commercial Rent Tax May Be Due

During our review, we found that Circle Line had not filed commercial rent tax returns for tax years 2006 and 2007 (June 1, 2005, to May 31, 2007) and excluded the license fees paid to the City when calculating the tax due since tax year 2005. As a result, we estimate that Circle Line may owe the City \$236,308 in commercial rent tax, excluding interest and penalties, for tax years 2005 to 2007 (June 1, 2004, to May 31, 2007).

According to Article XXIII of the agreement, "Licensee shall comply . . . with all applicable laws, rules, regulations and orders of any City, State, or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or the Licensee's use and occupation thereof."

Since commercial rent tax falls under the purview of the City's Department of Finance, we contacted Finance's Commercial Rent Tax Unit to determine whether the license fees should be included in the calculation of tax due. Finance officials informed us that license fees should be included in the calculation of tax due. As a result of our meeting, Finance has initiated an audit of Circle Line's compliance with the commercial rent tax regulations.

Circle Line Response: "Circle Line is currently undergoing an audit for commercial rent tax. Based on preliminary research by Hutton and Solomon, LLP, as stated in the Administrative Code for the City of New York, Title 11, Chapter 7 Section 11-704c. (3) –

‘Base rent shall be reduced by the amount of the taxpayer’s rent for, or reasonably ascribable to, the taxpayer’s own use of the premises: as piers insofar as such premises are used in interstate or foreign commerce.’ The boats of Circle Line were used in interstate commerce and therefore the license fees paid to NYC would not be subject to commercial rent tax. Based on this understanding, the filing threshold for 2006 and 2007 had not been met and therefore the returns were not filed. The license fees paid on Harbor Cruises leaving out of Battery Park piers were correctly reported and timely filed for the corresponding years on Commercial Rent Tax returns filed by Harbor Cruises, LLC.”

Auditor Comment: We believe that Circle Line should have included the amount of license fees paid to the City in its calculation of commercial rent tax in 2005 and that Circle Line is responsible for the payment of commercial rent tax for 2006 and 2007. The Department of Finance will provide a formal determination once it concludes its audit.

RECOMMENDATIONS

Circle Line should:

1. Pay \$186,408 in additional license fees and late charges to the City.

Circle Line Response: “Circle Line disagrees with this audit recommendation for the following reasons:

- a. Included in the underreported gross receipts of \$200,233, \$24,450 was related to a July 4, 2006 cruise on the Zephyr harbor cruise out of South Street Seaport which was not subject to the license fees. . . .
- b. The majority of the asserted underreported revenue, \$1,408,601, reflects handling fees for advance purchases made through the call center by Circle Line’s reservation office and through the internet for the period April 1, 2004 to March 31, 2007. . . . Circle Line was not subject to the license fees on its handling charges because the service is provided outside the licensed premises. Picking up the ticket at the window at Castle Clinton, which was not a licensed premise, is not ‘incidental’ to the overall purchase.
- c. The remaining items in Table II are not contested.
- d. According to the license agreement between Circle Line and the City of New York Parks and Recreation (page 4), it is provided that ‘Gross Receipts shall exclude the amount of any federal, state or city taxes which may now or hereafter be imposed upon or be required to be paid by licensee as against its sales.’ It is our understanding that taxes paid on Forms CT-184 and CT-184M should be excluded from gross revenue on the calculation of license fees paid to NYC since those taxes are solely based upon gross sales revenue. The actual amounts of taxes paid with those returns for the calendar years 2004, 2005, 2006 and the estimated amount for 2007 totals \$605,563. This amount should reduce the sales subject to the license fee. Thus, Circle Line is due a refund of \$43,903 on this reduction of the license fees.”

Parks Response: “DPR [Parks] has issued a Notice to Cure to Circle Line requiring that it pay \$186,408 in additional license fees and late charges.”

Auditor Comment: Circle Line’s interpretation of the license agreement is disingenuous. The intention of the section, quoted by Circle Line officials, is to exclude sales tax that is imposed on sales. Since sales tax is a pass-through tax (Circle Line collects sales tax on behalf of the New York State), the agreement allows Circle Line to exclude the sales tax collected from the gross receipts.

2. Calculate and pay additional fees due that result from unreported handling fees for the period covering April 1, 2007, to December 31, 2007.

Circle Line Response: Circle Line officials did not respond to this recommendation.

Parks Response: “DPR has issued a Notice to Cure to Circle Line requiring that ‘Within thirty (30) days from the date of this letter Circle Line should submit a statement of gross revenue covering unreported handling fees for the period from April 1, 2007 to December 31, 2007, along with a check covering 7.25% of the reported total.’”

Auditor Comment: Although Parks has taken the initiative to collect the license fees for the unreported handling fees, Parks should be aware that the license fee applied to gross receipts increased to 7.5% starting April 1, 2007. Therefore, Parks may need to send Circle Line a revised Notice to Cure to address the change to the higher fee.

3. Contact the Department of Finance and seek a final determination with regards to the commercial rent tax and any interest and penalties due for tax years 2005 to 2007.

Circle Line Response: “Circle Line disagrees with this audit recommendation for the following reason:

“Circle Line is currently undergoing an audit for commercial rent tax. Based on preliminary research by Hutton and Solomon, LLP, as stated in the Administrative Code for the City of New York, Title 11, Chapter 7 Section 11-704c. (3) – ‘Base rent shall be reduced by the amount of the taxpayer’s rent for, or reasonably ascribable to, the taxpayer’s own use of the premises: as piers insofar as such premises are used in interstate or foreign commerce.’ The boats of Circle Line were used in interstate commerce and therefore the license fees paid to NYC would not be subject to commercial rent tax. Based on this understanding, the filing threshold for 2006 and 2007 had not been met and therefore the returns were not filed. The license fees paid on Harbor Cruises leaving out of Battery Park piers were correctly reported and timely filed for the corresponding years on Commercial Rent Tax returns filed by Harbor Cruises, LLC.”

Parks Response: Parks stated that it has requested its “Director of Concession Audits follow-up with the Department of Finance to ensure that Circle Line complies with Recommendation 3.”

Auditor Comment: As previously discussed, we believe that Circle Line should have included the amount of license fees paid to the City in its calculation of commercial rent tax for 2005 and that Circle Line is responsible for the payment of commercial rent tax for 2006 and 2007. We await the Department of Finance’s determination. Based on that determination, Parks should take whatever action it deems appropriate.

Parks should:

4. Ensure that Circle Line pays the \$186,408 in additional license fees and late charges, and any additional fees that result from unreported handling fees covering the period April 1, 2007, to December 31, 2007. If the outstanding balance is not paid, Parks should use Circle Line’s \$50,000 security deposit and seek legal action to recoup the difference.

5. Coordinate efforts with the Department of Finance to pursue collection of commercial rent tax and any additional interest and penalties that Finance may assess.

Parks Response: “Recommendations 4 and 5 directed to DPR have been addressed by issuance of the Notice to Cure to Circle Line. If Circle Line fails to comply with the payment requirements assessed in the audit report and Notice to Cure, DPR will seize its \$50,000 security deposit and seek legal action to recoup the difference.”



Marks Paneth
& Shron LLP

Certified Public Accountants
and Consultants

January 23, 2008

Mr. John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

**Re: Audit Report on the Compliance of Circle Line - Statue of Liberty Ferry, Inc.
With its License Agreement and Payment of Fees Due**

Dear Mr. Graham:

Enclosed, please find a copy of the response to the above mentioned report.

Very truly yours,

Thomas Engelhardt, CPA/PFS CMA
Partner
Marks Paneth & Shron, LLP

cc: Mr. Michael Morgese
Mr. Robert L. Garafola
Mr. Michael Leonetti
Mr. JB Meyer
Mr. Neil Von Knoblauch
Mr. William Moran

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Marks Paneth
& Shron LLP

*Certified Public Accountants
and Consultants*

January 23, 2008

Mr. John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

Dear Mr. Graham:

In response to the Draft Audit Report on the Compliance of Circle Line-Statue of Liberty Ferry, Inc. (Circle Line) with its License Agreement with the New York City Department of Parks and Recreation on Payment of Fees Due (dated January 9, 2008), we submit the following on behalf of Circle Line.

Introduction

Circle Line operated an excursion ferry service to Liberty Island and Ellis Island, both part of the National Parks Service for over 30 years out of Battery Park in Manhattan. During that time period, Circle Line always submitted license fees due to New York City on a timely basis, even after the tragic events of 9/11. Circle Line has been a model partner with the City of New York and Department of Parks and Recreation and based on its many years of maintaining an excellent relationship, Circle Line is confident that any difference of opinion regarding this audit can be resolved in a timely manner.

Overview

Under the terms of the license agreement and short term permits, Circle Line was required to pay the City the greater of 7 1/4 percent of gross receipts or a minimum annual fee of \$500,000 for operating years 2005 to 2007 (April 1, 2004 - March 31, 2007). The minimum annual fee or the percentage fee was payable on or before the 20th day of each month with a monthly 2 percent penalty charged for amounts 15 days overdue. In addition, Circle Line was required to:

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- maintain a \$50,000 security deposit with the City,
- carry proper insurance coverage and name the City as an additional insured,
- submit monthly and annual gross receipts statements to Parks, and
- pay all required taxes

Facts and Findings

- For the period April 1, 2004 to March 31, 2007 Circle Line reported gross revenues subject to the 7 1/4 percent fee to the City of New York in the amount of \$81,231,178.68. NYC License Fee payments on this amount totaled \$5,889,276.82, all of which was paid 100% on a timely basis.
- For the period April 1, 2004 to March 31, 2007 Circle Line maintained a \$50,000 security deposit with the City.
- For the period April 1, 2004 to March 31, 2007 Circle Line carried proper insurance coverage and named the City as an additional insured.
- For the period April 1, 2004 to March 31, 2007 Circle Line submitted monthly and annual gross receipts statements to the Department of Parks and Recreation.
- For the period April 1, 2004 to March 31, 2007 Circle Line paid all required taxes on a timely basis.
- The City of New York Department of Finance issued a no change letter to Circle Line dated February 21, 2007 regarding commercial rent tax for the period June 1, 2002 to May 1, 2005.

Conclusions:

According to the City of New York Audit Report, Circle Line generally adhered to the provisions of its agreement. Specifically, Circle Line paid its fees on time, maintained the required property and liability insurance and contributed the \$50,000 as security deposit to the City.

Circle Line agrees with this conclusion.

Audit Recommendations and Agency Implementation Plan:

- 1) According to the City of New York Audit Report, Circle Line underreported \$1,629,943 (2%) in gross receipts for the period April 1, 2004 to March 31, 2007 resulting in additional fees due of \$118,171.

Circle Line disagrees with this audit recommendation for the following reasons:

- a. Included in the underreported gross receipts of \$200,233, \$24,450 was related to a July 4, 2006 cruise on the Zephyr harbor cruise out of South Street Seaport which was not subject to the license fees. This cruise did not use the property associated with the license fees.

- b. The majority of the asserted underreported revenue, \$1,408,601, reflects handling fees for advance purchases made through the call center by Circle Line's reservation office and through the internet for the period April 1, 2004 to March 31, 2007. Those fees were to reimburse Circle Line for the costs of operating its reservation service as required by the National Park Service. The reservation service entailed both reservations for the Circle Line ferry service and entry into the Statue of Liberty and the Ellis Island Historical Center as well as the distribution of free monument passes. The only involvement that occurred in New York was at Castle Clinton where tickets not previously mailed or emailed were picked up by customers. Since these services were not rendered on property covered by the license, Circle Line was not subject to the license fees on its handling charges because the service is provided outside the licensed premises. Picking up the ticket at the window at Castle Clinton, which was not a licensed premise, is not "incidental" to the overall purchase.
 - c. The remaining items in Table II are not contested.
 - d. According to the license agreement between Circle Line and the City of New York Parks and Recreation (page 4), it is provided that "Gross Receipts shall exclude the amount of any federal, state or city taxes which may now or hereafter be imposed upon or be required to be paid by licensee as against its sales." It is our understanding that taxes paid on Forms CT-184 and CT-184M should be excluded from gross revenue on the calculation of license fees paid to NYC since those taxes are solely based upon gross sales revenue. The actual amounts of taxes paid with those returns for the calendar years 2004, 2005, 2006 and the estimated amount for 2007 totals \$605,563. This amount should reduce the sales subject to the license fee. Thus, Circle Line is due a refund of \$43,903 on this reduction of the license fees.
- 2) According to the City of New York Audit Report, it is recommended that Circle Line be charged \$68,237 in late charges on the additional fees due per the audit report of \$118,171.

Circle Line disagrees with this audit recommendation for the following reason:

As stated in the conclusion, Circle Line has adhered to the provisions of their agreement with the City of New York. The proposed additional fees are due to a difference in interpreting the contract and not due to a willful neglect of the terms. Therefore, Circle Line feels that no interest or penalty should be charged.

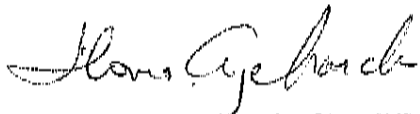
- 3) In addition to recommendations 1 and 2, according to the City of New York Audit Report, Circle Line did not file commercial rent tax returns for tax years 2006 and 2007 and excluded the license fees paid to the City when calculating the tax due since tax year 2005.

Circle Line disagrees with this audit recommendation for the following reason:

Circle Line is currently undergoing an audit for commercial rent tax. Based on preliminary research by Hutton and Solomon, LLP, as stated in the Administrative Code for the City of New York, Title 11, Chapter 7 Section 11-704c. (3) – "Base rent shall be reduced by the amount of the taxpayer's rent for, or reasonably ascribable to, the taxpayer's own use of the premises: as piers insofar as such premises are used in interstate or foreign commerce." The boats of Circle Line were used in interstate commerce and therefore the license fees paid to NYC would not be subject to commercial rent tax. Based on this understanding, the filing threshold for 2006 and 2007 had not been met and therefore the returns were not filed. The license fees paid on Harbor Cruises leaving out of Battery Park piers were correctly reported and timely filed for the corresponding years on Commercial Rent Tax returns filed by Harbor Cruises, LLC.

Please contact us if any further explanation or clarification is required regarding the Audit Implementation Plan.

Very truly yours,



Thomas Engelhardt, CPA/PFS CMA
Partner
Marks Paneth & Shron, LLP

cc: Mr. Michael Morgese
Mr. Robert L. Garafola
Mr. Michael Leonctti
Mr. JB Meyer
Mr. Neil Von Knoblauch
Mr. William Moran



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
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Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

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betsy.smith@parks.nyc.gov

January 24, 2008

BY FAX AND MAIL

Mr. John Graham
Deputy Comptroller
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007

**Re: Draft Audit Report on Circle Line-Statue of Liberty Ferry, Inc.
April 1, 2006 to March 31, 2007, FM07-132A, Dated January 9, 2008**

Dear Mr. Graham:

This letter represents the Parks Department's ("DPR") response to the recommendations contained in the subject audit report on Circle Line-Statue of Liberty Ferry, Inc. ("Circle Line").

DPR has issued the attached Notice to Cure to Circle Line requiring that it pay \$186,408 in additional license fees and late charges, **Recommendation 1**, submit a statement of gross receipts and applicable payment to DPR covering revenue from handling fees for the period April 1, 2007 to December 31, 2007, **Recommendation 2**, and have requested that DPR's Director of Concessions Audits follow-up with the Department of Finance to ensure that Circle Line complies with **Recommendation 3**.

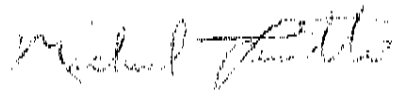
Recommendations 4 and 5 directed to DPR have been addressed by issuance of the Notice to Cure to Circle Line. If Circle Line fails to comply with the payment requirements assessed in the audit report and Notice to Cure, DPR will seize its \$50,000 security deposit and seek legal action to recoup the difference.



John Graham
January 24, 2007
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We wish to thank the Comptroller's audit staff for their efforts in performing this review.

Sincerely,



Michael Leonetti
Chief Accountant
Revenue Division

cc: Comm. Adrian Benepe
Robert Garafola
Elizabeth Smith
David Stark
Laura Goebel
Alessandro Olivieri
Walter Roberts
Frank D'Ercola
Anthony DeLuca (NYC Department of Finance)
Jeffrey Kay, Mayor's Office of Operations



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January 24, 2008

BY FAX AND MAIL

Mr. John B. Meyer
President/CEO
Circle Line-Statue of Liberty Ferry, Inc.
17 Battery Place, Suite 715
New York, NY 10004

Re: NOTICE TO CURE

**Draft Audit Report on Circle Line-Statue of Liberty Ferry, Inc.
April 1, 2006 to March 31, 2007, FM07-132A, Dated January 9, 2008**

Dear Mr. Meyer:

This letter addresses the findings and recommendations contained in the subject draft audit report on Circle Line-Statue of Liberty Ferry, Inc. ("Circle Line"). Circle Line generally adhered to the provisions of its license agreement. Circle Line paid its fees on time, maintained the required property and liability insurance, and contributed the compulsory \$50,000 as security deposit to the City.

However, the auditors found that Circle Line did not pay all of its required compensation to the City and owes a total of \$186,408 in additional fees and late charges. Also, Circle Line did not submit its 2005, 2006 and 2007 certified annual gross receipts statements to Parks in a timely manner. Furthermore, the audit report disclosed that Circle Line did not file commercial rent tax returns for tax years 2006 and 2007 and excluded the license fees paid to the City when calculating the tax due since tax year 2005. Consequently, the auditors calculated that Circle Line may owe the City \$236,308 (exclusive of interest and penalties) in commercial rent tax.

The audit report recommends that Circle Line should:

Recommendation 1. Pay \$186,408 in additional license fees and late charges to the City.

Circle Line underreported \$1,629,943 in gross receipts for operating years 2005 through 2007 and did not correctly calculate the amount of license fees due the City. Specifically the auditors found that:



John B. Meyer
January 24, 2008
Page 2

- \$200,233 in gross receipts was recorded for operating year 2007 on Circle Line's general ledger but not reported in the gross receipts reports submitted to Parks.
- Circle Line did not report \$1,408,601 in handling fees (services charges) that was charged to the customers who purchased advance tickets on the Internet or by telephone for operating years 2005 through 2007. Article 2.0 c) i) of Circle Line's License Agreement with the City states that, "Gross Receipts' shall be defined to include all funds received by Licensee without deduction or set-off of any kind, from the sale of ferry tickets, . . . resulting directly or indirectly from Licensee's use of the Licensed Premises . . . Gross Receipts shall include any orders, placed or made directly or indirectly at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the premises, and shall include all receipts for services to be rendered or orders taken at the Licensed Premises for services to be rendered outside thereof. All sales made or services rendered directly or indirectly from Licensed Premises shall be construed as made and completed therein even though payment there for may be made at some other place, and although delivery of merchandise sold or services rendered directly or indirectly upon Licensed Premises may be made other than at Licensed Premises." Clearly, based on the preceding definition, Circle Line's license agreement in no way allows for the deduction of handling fees from gross receipts and therefore, the full amount of \$1,408,601 should have been reported to Parks.
- Revenue associated with ticket sales was underreported because \$8,929 in revenue was incorrectly recorded as New Jersey ticket revenue.
- Ticket and charter revenue totaling \$16,597 was recorded on the daily summary report of ticket revenue (Concentrator Report) or charter contracts but not posted to the general ledger.
- Gross receipts of \$19,564 were overstated.
- Group sales revenue was reduced by \$15,147 without any documentation to support the adjustment.

Based on the above findings, Circle Line owes the City \$118,171 ($\$1,629,943 \times 7.25\%$). In addition, as of January 19, 2008, Circle Line owes late charges totaling \$68,237. Circle Line is afforded thirty (30) days from the date of this letter to remit a check to this office, made payable to the City of New York Parks and Recreation, for the total balance due, \$186,408, to clear this assessment.

Recommendation 2. Calculate and pay additional fees due that result from unreported handling fees for the period covering April 1, 2007 to December 31, 2007.

Within thirty (30) days from the date of this letter Circle Line should submit a statement of gross revenue covering unreported handling fees for the period from April 1, 2007 to December 31, 2007, along with a check covering 7.25% of the reported total.

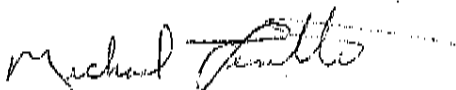
John B. Meyer
January 24, 2008
Page 3

Recommendation 3. Contact the Department of Finance and seek a final determination with regards to the commercial rent tax and any interest and penalties due for tax years 2005 to 2007.

In a conversation I had on January 23, 2008 with Circle Line's CPA, Thomas Engelhardt, he indicated that he has been in contact with Anthony DeLuca, Supervisor, Commercial Rent Tax Unit at the City of New York Department of Finance to resolve any commercial rent tax issues and amounts owed, covering the tax years 2005 to 2007. By copy of this letter to Walter Roberts, Parks' Director of Concessions Audit, I am requesting that he follow-up with the Department of Finance to ensure Circle Line's compliance with Recommendation 3.

Finally, we wish to thank Circle Line for its cooperation during the audit review and anticipate its full compliance regarding the above stated recommendations.

Sincerely,



Michael Leonetti
Chief Accountant
Revenue Division

cc: R. Garafola
E. Smith
D. Stark
L. Goebel
W. Roberts
F. D'Ercola
A. DeLuca (NYC Department of Finance)
T. Engelhardt (Marks Paneth & Shron, LLP)