



INFORMATION REPORT

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: City Wide
COMMITTEE DATE: December 5, 2012	
SUBJECT/REPORT NO: Hamilton Waterfront Trust Update – GST Audit and Operating Losses (FCS12092) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Roberto Rossini General Manager Finance & Corporate Services Department	PREPARED BY: Brian McMullen 905-546-2424 ext. 4467
SIGNATURE:	

Council Direction:

Council at its meeting of September 12, 2012, approved item 6.3 General Issues Committee Report 12-022, related to a Public Delegation from Gary Santucci on behalf of concerned citizens, respecting alleged operational and financial issues of the Hamilton Waterfront Trust (HWT) raised by the Bay Observer and Hamiltonian which reads as follows:

- (a) That staff be authorized and directed to investigate and report back to the General Issues Committee with clarification respecting the following issues as noted in the presentation provided by Gary Santucci with respect to the Hamilton Waterfront Trust:
 - (i) Point #4 – Alleged Failed G.S.T. Audit – audit performed by the Canada Revenue Agency which resulted in the Trust owing approximately \$500,000;
 - (ii) Point #5 – Continuous Losses – four years of continuous losses was sustained on most operations from 2008 to 2011, totalling \$1,942,000;
 - (iii) Point #9 – Unanswered Questions – In 2011, a General Issues Committee (G.I.C.) received a delegation from the Waterfront Trust. The following resulted:

**SUBJECT: Hamilton Waterfront Trust Update – GST Audit and Operating Losses
(FCS12092) (City Wide) (Outstanding Business List Item) – Page 2 of 4**

- (aa) Councillor Ferguson rightfully asked of the GST audit, what had happened and what were the details;
 - (bb) Councillor Pearson supported his request and asked for the distribution to all of Council of the response.
- (b) That the Hamilton Waterfront Trust be requested to release the reason for the Canada Revenue Agency's denial of the appeal.

Information:

Canada Revenue Agency (CRA) GST Audit of Hamilton Waterfront Trust

Prior to the General Issues Committee meeting of September 6, 2012, City of Hamilton staff had discussions with HWT's Executive Director, Werner Plessl, regarding CRA's GST adjustments reported in HWT's 2010 and 2011 financial statements. City staff visited HWT's offices to review HWT's GST/HST files for the purposes of obtaining details on GST adjustments as a result of CRA's audit.

Staff advise that HWT's files contained the following information:

1. HWT's unsigned Letter to Canada Revenue Agency (CRA) dated February 13, 2011:
 - This letter requested relief of interest resulting from reassessment from audit finalized on January 24, 2011, of \$428,945.09 (excluding interest) and indicates that GST owing was revised to \$323,126.84 after discussions between HWT and CRA.
 - Audit covered the two-year period of January 1, 2006 to December 31, 2007.
 - CRA's Statement of Audit Adjustments was not available in the file.
2. CRA's letter to HWT regarding payment arrangement dated April 8, 2011:
 - This letter approved repayment at \$35,000 per quarter for 6 consecutive quarters and the balance to be discussed at a later date.
3. CRA's letter in response to HWT's letter dated June 30, 2011:
 - This letter allowed partial relief of penalty and interest, as requested in HWT's letter of February 24, 2011, up to the date of CRA's Notice of Reassessment being January 10, 2011. The amount of adjustment was not available in the file.

**SUBJECT: Hamilton Waterfront Trust Update – GST Audit and Operating Losses
(FCS12092) (City Wide) (Outstanding Business List Item) – Page 3 of 4**

Staff advises that HWT's files did not contain the following information:

1. Files and correspondence for CRA's Notice of Assessment / Reassessment of GST/HST Rebate Application dated January 2011 covering the audit period of January 1, 2006 to December 31, 2007.
2. CRA's Statement of Audit Adjustments and related files dated January 2011 covering the audit period of January 1, 2006 to December 31, 2007.
3. HWT's signed letter to CRA dated February 24, 2011
4. HWT's files and calculations to support amounts in question from CRA's GST audit.
5. Any appeal filed by HWT and CRA's response to the appeal, if filed.

The Excise Tax Act allows two 90 day periods for appeals of GST/HST assessments. A Notice of Objection can be filed within 90 days of receiving a Notice of Assessment or Notice of Reassessment. An Appeal to the Tax Court of Canada can be made within 90 days of receiving a Notice of Decision from the Appeals Division of CRA.

Therefore, a formal appeal deadline would have been April 10, 2011 being 90 days from the date of CRA's Notice of Reassessment of January 10, 2011.

Further, as HWT's files did not contain all of the information related to the GST audit, HWT's Executive Director has been asked to request information related to the GST audit from Canada Revenue Agency. HWT's Executive Director has advised City staff that he had not received the information requested from CRA as of November 19th, 2012.

Hamilton Waterfront Trust Operating Losses

The presentation from Gary Santucci indicated that HWT has incurred losses as follows:

2008	\$211,000
2009	\$364,000
2010	\$893,000
2011	\$474,000
Total	\$1,942,000

Staff has verified these operating losses against the annual audited financial statements. These operating losses include amortization expenses on tangible capital assets but do not include acquisitions of tangible capital assets. These two amounts are cash transactions which alter the cash requirements of HWT.

In the presentation to the General Issues Committee on September 6, 2012, the Executive Director of the Hamilton Waterfront Trust indicated that they expect to turn a profit in future years as efforts to increase their donations are expanded.

**SUBJECT: Hamilton Waterfront Trust Update – GST Audit and Operating Losses
(FCS12092) (City Wide) (Outstanding Business List Item) – Page 4 of 4**

At this time, the City of Hamilton has not committed to funding any operating losses incurred by HWT.