



Town of Sardinia

Tax Relief Rebate Program

Report of Examination

Period Covered:

August 1, 2013 — June 3, 2014

2014M-189



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

November 2014

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Sardinia, entitled Tax Relief Rebate Program. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Town of Sardinia (Town) is located in Erie County (County) and has approximately 2,800 residents. The Town Board (Board) is the Town's legislative body and is comprised of the Town Supervisor (Supervisor) and four council members. The Board is responsible for overseeing the Town's operations and finances, including adopting the annual budget and developing long-term financial plans. The Supervisor is the Town's chief fiscal officer.

The Town provides various services to its residents including general governmental support, maintaining and improving Town roads, snow removal, public improvements and recreation and cultural activities. The Town's budgeted appropriations for the 2014 fiscal year total approximately \$1.8 million and are funded primarily by revenues from serving as a landfill host community, State aid and sales tax.

In 2002, the Town entered into a municipal host agreement with a waste management company which permitted the company to operate a landfill within the Town's boundaries.¹ Pursuant to the agreement, the Town receives fees from the landfill's owners based on the amount of waste accepted at the landfill for disposal and the remaining disposal space available at the landfill. In total, the Town received more than \$1 million during the 2013 fiscal year, which comprised approximately 58 percent of the Town's total revenues.

In August 2013, the Board adopted a local law establishing a tax relief or tax rebate program called the "Town Relief Under Sardinia Taxes Law" or "TRUST" ("tax relief rebate program" or "TRUST plan"). Under the TRUST plan, the Town provided property owners with a one-time tax relief payment based on the amount of school district property taxes paid during the 2013 calendar year. Individuals and businesses located within the Town were entitled to receive a payment equal to the amount of school taxes paid on one parcel, but not to exceed \$1,500. During the last four months of the 2013 calendar year, the Town issued 979 tax rebate checks totaling \$1,166,319.

Objective

The objective of our audit was to review the Town's tax relief rebate program. Our audit addressed the following related question:

- Did the Board properly establish and administer the Town's tax relief rebate program?

¹ For purposes of this report, we assume that the Town is authorized to enter into the host agreement and that the terms and conditions are enforceable.

**Scope and
Methodology**

We reviewed the local law establishing the tax relief rebate program and a sample of tax rebates issued during the period August 1, 2013 through June 3, 2014.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the New York State General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

Tax Relief Rebate Program

Town officials are entrusted with public resources and have a responsibility to comply with laws and regulations, behave in an ethical manner and safeguard the Town's resources. Towns are authorized to adopt and amend local laws relating to their property, affairs and government, as well as in relation to certain other matters including "the presentation, ascertainment, disposition and discharge of claims against it." Any such local law, however, may not be inconsistent with any "general law" or the State constitution.²

We reviewed the local law adopted by the Board establishing the tax relief rebate program and a sample of tax rebates issued during the 2013 fiscal year. We reviewed 177 rebates³ totaling \$206,883 to ensure that the payments were supported by sufficient documentation and in compliance with the terms and requirements of the local law. We noted no material discrepancies in the amounts issued, and all payments were supported by appropriate documentation. However, because the State Constitution prohibits towns from loaning or giving money to any private corporation or person,⁴ including property owners and residents, we believe the Town lacked authority to issue the tax refunds to property owners without a special act from the State Legislature.⁵

Although the State Constitution prohibits a town from giving or loaning money or property to or in aid of any individual, private corporation or association, or private undertaking, it does not prohibit a town from making payments to private individuals to discharge a statutory or contractual obligation on the part of the town. Similarly, a town may adopt a local law authorizing the discharge of a moral obligation through the payment of an equitable claim. However, in this instance, the Town was under no statutory or contractual obligation to provide a tax rebate to property owners. Moreover, the Town was under no moral obligation to do so because property owners conferred no benefit on the Town, the Town had no legal liability for

² New York State Municipal Home Rule Law, Section 10(1)(ii)(a)(5)

³ See Appendix B, Audit Methodology and Standards, for details regarding our sample selection.

⁴ Article VIII, Section 1 of the State Constitution prohibits a town from giving or loaning money or property to or in aid of any individual, or private corporation or association or private undertaking.

⁵ It should be noted that in analogous situations, towns have sought special legislation authorizing refunds to property owners (see, e.g., Laws of 2007, Chapter 499 [Town of Clifton Park]; Laws of 2000, Chapter 221 [Town of Huntington Water Supply District]; Laws of 1994, Chapter 314 [Town of Gates Water District]; see also Bill Number S7109A/A9504 of 2014 [Town of Henrietta]).

services performed by the property owners and the property owners provided no services to the Town.⁶ Therefore, we believe the Town acted improperly in adopting the local law and the more than \$1.1 million in cash rebates provided to property owners represents an unconstitutional gift of Town moneys.

The former attorney for the Town stated that the local law was adopted to permit the Town to discharge a moral obligation to its landowners. Town officials believed that, because the Town collected fees pursuant to a municipal host agreement (agreement) in exchange for hosting a landfill, the Town's landowners had an equitable claim to those funds to the extent that the funds exceeded the amounts that were reasonably necessary to fund Town expenditures and permitted reserves. Under the agreement, the Town acknowledged and recognized the ability of a private entity to operate a landfill in the Town and the private entity agreed to pay certain fees to the Town. However, the agreement contains no provisions explaining either the purpose of the fees or their intended use by the Town. As such, we do not believe that the agreement gives rise to a moral obligation on the part of the Town or an equitable claim accruing to the property owners in the Town.

The Town's landfill revenues have allowed the Board to almost completely eliminate the need to levy real property taxes for Town purposes and have contributed to the accumulation of a significant amount of fund balance.⁷ Had the Board wished to provide additional tax relief to property owners, the Board could have used its surplus funds to reduce County property taxes levied in the Town in accordance with the New York State Town Law (Town Law).⁸ Furthermore, since a share of the County sales tax is allocated to the Town, the Board could have had all or a portion of its sales tax allocation applied to reduce County property taxes levied in the Town in accordance with the New York State Real Property Tax Law (Tax Law).⁹ However, we found no evidence in Board minutes or elsewhere that the Board discussed or considered using these options to provide tax relief.

Under the local law, the Town provided a rebate to property owners equal to the amount of school taxes paid on a parcel or \$1,500, whichever was less. Owners of multiple parcels were entitled to only one rebate and were allowed to choose the particular parcel on which

⁶ The courts have stated that "no moral obligation can arise and no equitable claim can be established where no benefit is conferred on [the town] . . . , or where there is no legal liability for services and none were performed." See *City of Rochester v. Chiarella*, 98 AD 2d 8 at 11, *aff'd* 63 NY2d 857.

⁷ The Town's budget requires real property taxes to be levied on a portion of the Town known as the Lighting District. During the 2014 fiscal year, approximately \$14,000 in real property taxes were levied on the property located within the Lighting District.

⁸ Town Law Section 112(2)

⁹ Tax Law Section 1262(c)

the rebate was based. We reviewed 177 rebates¹⁰ totaling \$206,883 to ensure that the payments were supported by sufficient documentation and in compliance with the terms and requirements of the local law. We noted no material discrepancies in the amounts issued and all payments were supported by appropriate documentation.

Although we identified no obviously inaccurate, erroneous or duplicate payments, the local law, as written and adopted by the Board, was too ambiguous for us to conclude with certainty exactly who was eligible for payment because the local law did not clearly define who was eligible for rebates. Moreover, the section of the local law describing the Town's application process was also ambiguous. However, Town officials developed and distributed additional written correspondence and documentation clarifying their interpretation and administration of the program. Using this information, we reviewed all 177 payments in our sample to ensure that rebates were issued only to appropriate individuals and businesses and noted no exceptions.

In addition, we reviewed the Town's process and procedures for issuing rebate payments, including the receipt of applications, review and approval of applications and issuance of payment. We found that the former Supervisor was responsible for reviewing and approving all rebate applications, processing applications and issuing checks, without Board oversight or review. The rebates were processed outside of the normal cash disbursement process and not presented to the Board for review or approval. As such, key financial duties were not adequately segregated and there were no effective compensating controls. Although our review of rebate payments did not reveal any improper payments, the Board's inadequate oversight of the rebate process and payments creates a risk that rebate payments could have been issued to ineligible parties or in excess of the amount allowed by the local law.

Recommendations

The Board should:

1. Consider seeking special legislation from the State Legislature to validate its local law and the issuance of tax rebate checks to date.
2. Not authorize issuance of rebates again under this local law without clarifying the language in the local law regarding eligibility and the application process and without securing special legislation authorizing the rebates.
3. Review and approve all claims for payment including any one-time or unique claims to ensure that such payments are supported by sufficient documentation and comply with statutory requirements or Town policies.

¹⁰ See Appendix B, Audit Methodology and Standards, for details regarding our sample selection.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following page.

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Councilmen: Cheryl L. Earl
Leonard R. Hochadel
David L. Montgomery
Douglas J. Morrell
Town Clerk: Betsy A. Marsh
Hwy. Supt.: Donald W. Hopkins

September 29, 2014

New York State Comptroller's Office
110 State Street
Albany, New York 12236

Re: Town of Sardinia Audit of Tax Relief Rebate Program

Dear Sir or Madam:

The Town Board has had the opportunity to review the preliminary audit and confer with counsel, the interest of the Town Board was to provide tax payers with a one (1) time payment to reduce reserve funds within the Town while ensuring taxpayers received the benefit of those excess funds.

At the time it was the belief of the Board that the State of New York would unilaterally intervene and levy on the reserve funds from the Town and appropriate them to the State of New York's General Fund. Additionally the other options outlined in the audit were not fully explained, the Board believed that it was being properly counseled by their previous attorney. The Town Board diligently constructed an equitable plan to administer the Tax Relief to all tax payers within the Town of Sardinia with assurance that it was in accordance with the laws of the State of New York.

The Town Board focused its attention to making sure that the payments were prompt, (i.e. - to get to those who would benefit as quickly as possible) and mistakenly so believed that the overall process was in accordance with State Law. The attorney for the Town cited numerous authorities and case law which without further information meant to the Board that their actions were lawful and appropriate.

I trust this properly advises. If you have any further questions, please don't hesitate to contact the undersigned.

Very truly yours,

Beverly Gambino

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our objective was to review the manner in which the Town established and administered its tax relief rebate program. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We reviewed the local law establishing the tax relief rebate program to determine whether the Town acted outside of its authority when issuing tax refunds. We relied on the expertise, guidance and advice from staff of the Office of the State Comptroller’s Legal Division in order to make this determination.
- We reviewed the local law establishing the tax relief rebate program and other written documentation regarding the rebate application process in order to identify application deadlines and criteria for payment including required documentation, eligibility and rebate amounts.
- We interviewed appropriate Town officials regarding the rebate process, including the receipt of applications, review and approval of applications and issuance of payment.
- We reviewed a sample of 177 tax rebate payments totaling \$206,883 to ensure that the payments were supported by sufficient documentation and in compliance with the terms and requirements of the local law. Our sample¹¹ was selected using the following methods:
 - We used a random number generator to select a random sample of 100 rebates totaling \$117,060.
 - We reviewed eight rebate payments totaling \$11,320 issued to key Town officials including the former Supervisor, the bookkeeper, Board members and the Town Clerk.
 - We reviewed all rebate payments made near or at the end of the application deadline to ensure that applications were submitted within the established deadline. The sample was comprised of 25 rebates totaling \$27,980.
 - We reviewed 20 rebate payments totaling \$25,730 issued in the name of a business and reviewed the supporting documentation to ensure that no additional payments were issued in the name of the business owner as an individual.
 - We reviewed 29 payments totaling \$31,053 that appeared to be duplicate payments (more than one payment issued to the same person or business).

¹¹ Five rebate payments totaling \$6,261 were included in more than one of the samples.

- We compared all rebate payments in our sample to the Town's 2013 finalized tax roll to ensure that payments were issued to the appropriate individuals and businesses and only to individuals and businesses owning property in the Town.
- We reviewed all rebate applications and canceled check images to identify excessive (more than \$1,500 limit) or duplicate rebate payments (more than one payment issued to the same person or business).

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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