



Use of Foreign Fire Insurance Tax Money

In the cities of:
Buffalo, Rochester, Syracuse and Yonkers

2017-MS-5



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
EXECUTIVE SUMMARY	2
INTRODUCTION	5
Background	5
Objective	7
Scope and Methodology	7
Comments of Officials	7
USE OF FOREIGN FIRE INSURANCE TAX MONEY	8
Recommendations	12
APPENDIX A FFI Use Requirements by Entity	14
APPENDIX B Response From Officials	16
APPENDIX C Audit Methodology and Standards	17
APPENDIX D How to Obtain Additional Copies of the Report	18
APPENDIX E Local Regional Office Listing	19

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2018

Dear Officials:

The Office of the State Comptroller's goals include enabling and encouraging entities that receive and disburse foreign fire insurance (FFI) tax money to properly account for, use and protect this money.

Following is a report of our audit, entitled Use of Foreign Fire Insurance Tax Money. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article 3, Section 33-a¹ of the New York State General Municipal Law.

This audit's results and recommendations are resources for officials to use in effectively managing operations. If you have questions about this report, please feel free to contact the Statewide Audits office, as listed at the end of this report.

Respectfully submitted,

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

¹ This section generally authorizes the Comptroller to inspect and examine the records and accounts of any entity receiving and disbursing FFI tax money, with respect to funds received after January 1, 1976.



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

New York State imposes a 2 percent tax rate on the premiums of fire insurance policies written by certain out-of-state insurers against loss or damage by fire on property located in the State.² In general, these “foreign” fire insurance (FFI) funds are remitted annually to the New York State Department of Financial Services (DFS), and distributed to entities.³ According to the DFS website, recipients of FFI money include fire departments, fire companies, benevolent associations and the Firemen’s Association of the State of New York (FASNY). In 2016, DFS disbursed over \$44 million of FFI tax money.⁴ Except as otherwise provided, the FFI tax money may be used for any purpose, which the members of the fire department or company determine to be for the use and benefit of the department or company as a whole.

Unless a special law enacted by the State Legislature or a pre-1989 local law provides otherwise, the distribution and use of FFI tax money is governed by Insurance Law Sections 9104 and 9105. Generally, Insurance Law provides that the FFI tax money may be used for any purpose, which the members of the fire department or company determine to be for the use and benefit of the department or company as a whole. However, each entity’s use of FFI tax money depends on the specific law applicable to it.

The treasurer or other fiscal officer of the fire department affording fire protection coverage to the insured properties receives the FFI tax money.⁵ Our audit focused on the use of FFI tax money by six entities: the City of Buffalo (Buffalo), the City of Rochester (Rochester), the Syracuse Fire Department Association Inc. (Syracuse), the Buffalo Firefighters Two Percent Fund (Buffalo TPF), the Rochester Firefighters Two Percent Committee (Rochester TPC) and the Mutual Aid Association of the Paid Fire Department of the City of Yonkers, New York, Inc. (Yonkers). All fire companies represented by the six entities audited were staffed by paid firefighters.

² Insurance Law Sections 9104 and 9105, Special Acts, pre-1989 local law and City Charter

³ Not all FFI money is remitted to DFS for distribution to entities; some funds are remitted directly to the City of Buffalo by the insurance companies. Insurance companies remitted \$2.1 million to the City of Buffalo directly, as per Insurance Law 9104 and City Charter Article 25 during our audit period.

⁴ Total excludes New York City. The fire departments in the State maintain lists of streets that they serve, which determines the allocation of funds.

⁵ If the fire department does not have a treasurer or other fiscal officer, then the FFI tax money is paid to the fiscal officer of the authorities having jurisdiction or control of the fire department. In a multi-company fire department, the treasurer or fiscal officer receiving the FFI tax money is to distribute the amount received to the companies constituting the fire department, proportionate to the number of active members in each fire company. However, Insurance Law does not preclude the fire companies from paying all or part of the 2 percent money to the fire department. The propriety of a City transferring custody of the FFI tax money to a Trust is outside the scope of this audit.

Historically, these entities or the cities in which they are located were receiving FFI tax money and generally supposed to be using it to fund firefighter pension funds or care for indigent and disabled firefighters. The State Legislature has not enacted changes to the special acts governing how these entities use their foreign fire insurance tax money for decades, while in contrast there have been changes in pension benefits as well as provisions for firefighters with disabilities. (Subsequent to the issuance of the draft audit report, an amendment was made that provides that FFI tax money received by the Mutual Aid Association of the Paid Fire Department of the City of Yonkers Inc. be used in accordance with Insurance Law Sections 9104 and 9105.)⁶ We note that in the past the unions representing the paid firefighters in Buffalo, Syracuse and Rochester have commenced legal actions against their respective local cities for access to and use of the FFI tax money for the benefit of their members.

Scope and Objective

The objective of our audit was to determine whether FFI tax money was spent in accordance with special act legislation, city charters or other applicable laws, for the period January 1, 2014 through October 5, 2016.

Audit Results

FFI tax money was not always used in accordance with the laws. While all six entities had a process in place for administering FFI tax money, officials in Yonkers, Syracuse and Buffalo did not always use it according to their specific special act, city charter or other applicable laws. Positively, Rochester appeared to use its allocation of FFI tax money properly. The Rochester TCP and Buffalo TPF also appeared to use their FFI tax money properly, but did not always maintain adequate documentation for expenditures.

During the audit period, the six entities audited received almost \$8 million in foreign fire insurance tax money. Of that, over \$1.9 million, or 24 percent, was not used in accordance with statutory authority or previous OSC opinions. For example:

- Yonkers did not use FFI tax money totaling \$1.4 million for the audit period for the care of indigent and disabled firemen and their families, as required by its special act, because the officials told us they were unaware of the legislation. Rather, the money was used to reimburse costs related to active firemen and family members' health benefits, social events and administrative costs.
- Syracuse paid \$390,826 in FFI tax money to "The Syracuse Fire Department Association Supplemental Retirement Fund Inc.," which subsequently disbursed the money as one-time cash payments to individuals. This Office has long expressed the view that Sections 9104 and 9105 of Insurance Law do not authorize a fire department or company to make FFI tax money available for the personal use of individual firefighters.⁷ Individual City firefighters, in certain

⁶ Chapter 308 of the Laws of 1912, as amended by chapter 920 of the Laws of 1962, was last amended on December 18, 2017, by Chapter 499 of the Laws of 2017.

⁷ See e.g. OSC Opn No. 2000-6 and citations therein.

instances, may have received as much as \$27,000 from FFI tax money upon retirement, with payments totaling \$610,848 to 33 individuals for the audit period.⁸

- Buffalo paid \$26,180 in FFI tax money during our audit period to a beneficiary who died in 1983. Payments were fraudulently collected by the daughter of the deceased. While funding of firemen pensions had been provided for by the City Charter, all payments to this beneficiary should have ended upon her death, 34 years ago. Over time, the daughter of the deceased beneficiary fraudulently collected payments totaling \$291,070 from the City.

Officials indicated they were following past practice or agreements, or were unaware of the specific requirements related to the use of the FFI tax money. Without efforts by officials and trustees to use FFI tax money consistent with State law, the purpose of the law is not enforced.

Comments of Officials

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

⁸ As determined by vendor records

Introduction

Background

The recipients of foreign fire insurance (FFI) money include fire departments, fire companies, benevolent associations and the Firemen’s Association of the State of New York (FASNY). FFI is generated from a tax that is imposed on the premiums of fire insurance policies written by certain out-of-state insurers against loss or damage by fire on property located in the State.⁹ The insurer will collect and remit the tax money generally to NYS Department of Financial Services (DFS) which, in turn, distributes the proceeds to the proper recipients. The statewide FFI tax money disbursed by DFS for 2014 through June 2016 totaled approximately \$126 million (Figure 1).¹⁰

Figure 1: FFI Tax Money Disbursed by DFS^a

Year	Number of Disbursements	Dollar Amount
2014	1,984	\$37,071,312
2015	1,985	\$44,506,325
2016	1,984	\$44,417,199
Total	5,953	\$125,994,836

^a Excludes New York City

The taxes imposed are intended to directly benefit the fire department membership or fire companies providing the service. Except as otherwise provided, the FFI tax money may be used for any purpose that the members of the fire department or company determine to be for the use and benefit of the department or company as a whole, provided the expenditure is not illegal or contrary to public policy.

Unless a special law enacted by the State Legislature or a pre-1989 local law provides otherwise, the distribution and use of FFI tax money is governed by Insurance Law Sections 9104 and 9105. The treasurer or other fiscal officer of the fire department affording fire protection coverage to the insured property receives the FFI tax money. If the fire department does not have a treasurer or other fiscal officer, then the FFI tax money is paid to the fiscal officer of the authorities having jurisdiction or control of the fire department. In a multi-company fire department, the treasurer or fiscal officer receiving the FFI tax money is to distribute the amount received to the companies constituting the

⁹ The fire departments in the State maintain lists of streets that they serve, which determines the allocation of funds.

¹⁰ Insurance companies remitted \$2.1 million to the City of Buffalo directly, as per Insurance Law 9104 and City Charter Article 25

fire department, proportionate to the number of active members in each fire company. However, Insurance Law does not preclude the fire companies from paying all or part of the 2 percent money to the fire department.¹¹

We audited six entities to determine whether they used FFI tax money¹² appropriately during the period January 1, 2014 through October 5, 2016. Our audit focused on the potential use of about \$8 million in FFI tax money received¹³ (Figure 2).

Figure 2: Revenues and Stipulation of Use Requirements		
Entity	FFI Tax Money Revenues (January 1, 2014 through October 5, 2016)	Stipulation of Use Requirements^a
City of Buffalo (Buffalo)	\$ 2,181,392	City Charter
Buffalo Firefighters Two Percent Fund (Buffalo TPF)	\$ 605,392	Insurance Law 9105
Syracuse Fire Department Association Inc. (Syracuse)	\$ 952,719	Insurance Law 9104 and 9105
City of Rochester (Rochester)	\$ 1,832,349	Court-Approved Agreement
Rochester Firefighters Two Percent Committee (Rochester TPC)	\$ 620,000	Court-Approved Agreement
Mutual Aid Association of the Paid Fire Department of the City of Yonkers, New York, Inc. (Yonkers)	\$ 1,795,567	Special Act of 1912, amended in 1962
Totals	\$ 7,987,419	

^a See Appendix A for detail.

Each entity's use of FFI tax money depends on the specific law applicable to it. All fire companies represented by the six entities audited were staffed by paid firefighters. Historically, these entities or the cities in which they are located were receiving FFI tax money and generally supposed to be using it to fund firefighter pension funds or care for indigent and disabled firefighters. The State Legislature has

¹¹ The propriety of the City transferring custody of the FFI tax money to a Trust is outside the scope of this audit.

¹² Includes any unspent FFI tax money not previously spent and remaining in the entities' bank account, and spent during the audit period

¹³ DFS remitted FFI tax money in 2014, 2015 and through the end of fieldwork in 2016. Totals include amounts from insurers who remitted FFI tax money directly to the City of Buffalo, per the City Charter. The Town of Brighton remitted FFI tax money to the City of Rochester in the amount received from DFS, as the City of Rochester provides fire protection services for the Town. Rochester TPC FFI tax money revenue is received from the City of Rochester and, as such, is included in the revenue and disbursement totals of the City of Rochester.

not enacted changes to the special acts governing how these entities use their foreign fire insurance tax money for decades, while in contrast there have been changes in pension benefits as well as provisions for firefighters with disabilities. (Subsequent to the issuance of the draft audit report, an amendment was made that provides that FFI tax money received by the Mutual Aid Association of the Paid Fire Department of the City of Yonkers Inc. be used in accordance with Insurance Law Sections 9104 and 9105.)¹⁴ We note that in the past the unions representing the paid firefighters in Buffalo, Syracuse and Rochester have commenced legal actions against their respective local cities for access to and use of the FFI tax money for the benefit of their members.

Objective

The objective of our audit was to determine whether FFI tax money was spent in accordance with special act legislation, city charters or other applicable laws.

Scope and Methodology

We examined the use of FFI tax money received by the six audited entities for the period January 1, 2014 through October 5, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on the standards and the methodology used in performing this audit are included in Appendix B of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of Officials

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

¹⁴ Chapter 308 of the Laws of 1912, as amended by chapter 920 of the Laws of 1962, was last amended on December 18, 2017, by Chapter 499 of the Laws of 2017.

Use of Foreign Fire Insurance Tax Money

FFI tax money is a benefit to members of fire departments, fire companies, benevolent associations and FASNY. The intent of the benefit is specified by legislative actions, such as special acts (over 250 prescribing the use of FFI tax money), State laws, local laws, municipal charters or court-approved agreements (see Appendix A for required use for the six entities we audited).

As previously mentioned, the six entities (Buffalo, Syracuse, Rochester, Rochester TPC, Buffalo TPF and Yonkers) received about \$8 million of FFI tax money during our audit period, and disbursed over \$6.6 million of it during that same period (as shown in Figure 3 below).

Figure 3: Uses of FFI Tax Money

Entity	Used By	Amount Used	Examples of Uses (Expenditures)
Buffalo	City	\$2,181,392	City's general fund; 10% FASNY; sole beneficiary of Firemen's Pension Fund
Buffalo TPF	Firefighters	\$543,536	Cable service, furniture, coffee, exercise equipment, donations, boots, uniforms, appliances, newspapers and water service
Syracuse	Firefighters	\$701,857	Administration (salaries and taxes), supplemental retirement, functions, professional fees, service awards, calendars, crisis management, intervention team training, catastrophic, beverages at fires, station subsidies (coffee and condiments) and miscellaneous
Rochester	City	\$739,608	Reimbursement to City for linen services, firehouse repairs, small equipment, snowplow services and uniforms, audit services
Rochester TPC	Firefighters	\$996,652 ^a	Coffee, spices, tea, condiments, small utensils, kitchen supplies, water, televisions, exercise equipment, newspapers, cable service and furniture; legal and accounting, and building-related such as purchases related to land, engineer and design service and legal fees
Yonkers	Firefighters	\$1,482,139	Health benefit costs for members and family: vision exams, maternity/adoption benefits, reimbursements for medical and prescription, gym membership, group life insurance, administrative payroll and operational costs, bank service costs, parties, races and sports teams, dinner dance, newsletter, hospitality, professional fees, coffee, condiments and calendars
Totals		\$ 6,645,184	

^a Total includes \$226,902 specific to the Building Fund expenditures

The largest annual expenditures of FFI tax money included:

- The transfer of about \$650,000 to the City of Buffalo for general fund expenditures;

- Reimbursement of health benefit costs of active firefighters and their family members in Yonkers for items such as vision exams, medical and prescription copays and deductible reimbursements, physical incentive programs and maternity/adoption benefits, which averaged about \$320,000 per year;
- An annual supplemental retirement benefit disbursement paid in Syracuse of about \$195,000.

We reviewed the entities' expenditures of FFI tax money to determine whether they had used it in accordance with use requirements. We found inconsistencies such as not following the requirements of an entity's special act, cash payments made to individual firefighters, disbursements to a deceased pension beneficiary and gifts that were not nominal in value.

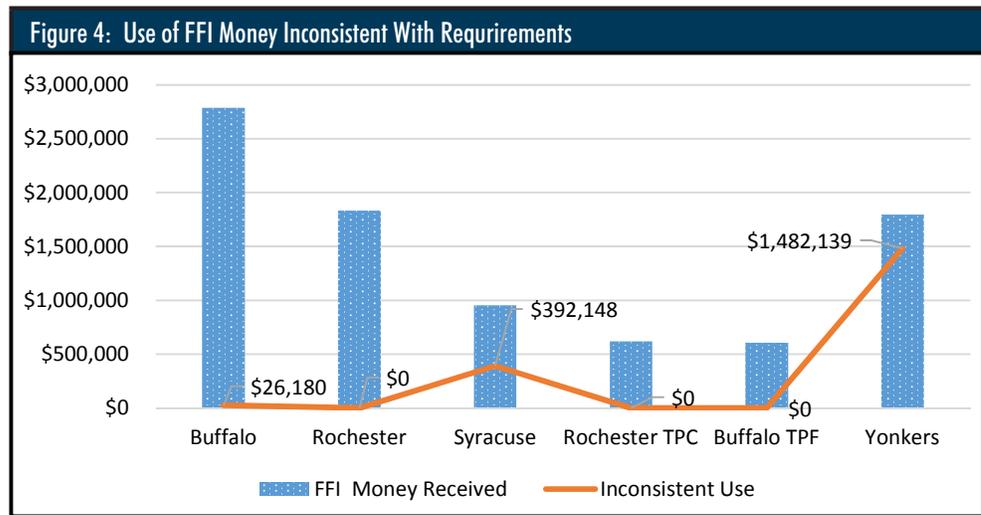
Inconsistent With Use Requirements – Disbursements made by three entities (Buffalo, Syracuse and Yonkers), totaling \$1,900,467, were not used in accordance with the required special act, city charter or other applicable law specific to the entity (Figure 4). For example:

- Yonkers did not use FFI tax money for the care of indigent and disabled firemen and their families in accordance with its special act. Rather, it expended over \$1.4 million to reimburse costs related to active firemen and family members' health benefits, social events and administrative costs for the Association's operation and payroll. Officials told us they were unaware of the legislation.
- Syracuse paid \$390,826 in FFI tax money to "The Syracuse Fire Department Association Supplemental Retirement Fund Inc.," which subsequently disbursed the money as one-time cash payments to individuals. Individual City firefighters, in certain instances, may have received as much as \$27,000 from FFI tax money upon retirement, with payments totaling \$610,848 to 33 individuals for the audit period.¹⁵ This Office has long expressed the view that Sections 9104 and 9105 of Insurance Law do not authorize a fire department or company to make FFI tax money available for the personal use of individual firefighters.¹⁶ As a result, we question the appropriateness of the use of FFI tax money paid.

¹⁵ Per vendor records

¹⁶ See e.g. OSC Opn No. 2000-6 and citations therein.

- Buffalo paid \$26,180 in FFI tax money during our audit period to a deceased beneficiary who died in 1983. Payments were fraudulently collected by the daughter of the deceased. While funding firemen pensions had been provided for by the City Charter, all payments to this beneficiary should have ended upon her death, 34 years ago. Over time, the daughter of the deceased beneficiary fraudulently collected payments totaling \$291,070 from the City.¹⁷
- Syracuse purchased gifts¹⁸ totaling \$1,322 (net of reimbursement) for such items as rings and watches. The gifts were for individual members based on years of service. These gifts were not nominal in value, which is inconsistent with Insurance Law.



Lack of Supporting Documentation – To determine whether the use of FFI tax money was appropriate, we examined 439 disbursements, totaling over \$2 million, of which 73 disbursements (Syracuse, Rochester TPC, Buffalo TPF and Yonkers), totaling over \$644,000, lacked supporting documentation and information to help ensure accurate use of FFI money.

¹⁷ The family member admitted that she had stolen benefits from the City of Buffalo's Firemen's Pension Fund that was intended for her late mother, who had died in 1983. In April 2017, the family member pled guilty and was convicted of the crime of Grand Larceny in the Third Degree, a class D felony. In addition, she signed a confession of judgment for the entire amount stolen.

¹⁸ Officials told us that the member is allowed \$200 for the gift; any value over that amount is to be reimbursed by the member.

Figure 5: Lack of Adequate Supporting Documentation

Entity	Tested		No or Inadequate Supporting Documentation for Expenditure	
	Number	Dollars	Number	Dollars
Buffalo TPF	187	\$141,422	15	\$7,299
Rochester	65	\$806,403	0	0
Syracuse	33	\$573,648	9	\$542,826
Rochester TPC	82	\$304,468	29	\$57,564
Yonkers	72	\$230,277	20	\$36,831
Totals	439	\$2,056,218	73	\$644,520

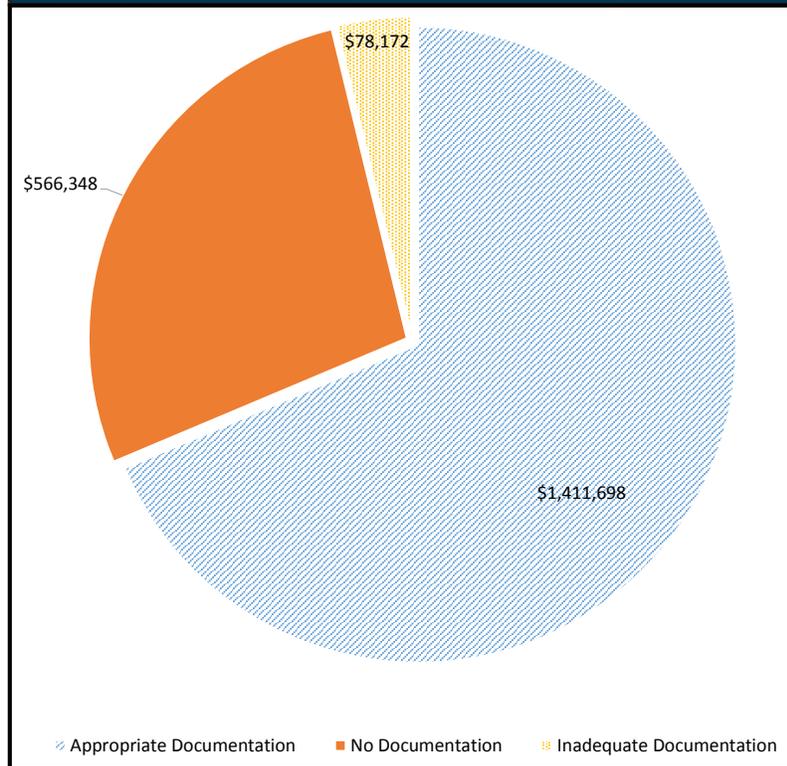
Note: Buffalo does not track FFI directly to expenditures. See Appendix A regarding firemen's pension fund assets used in the City's general fund.

Disbursements should be sufficiently supported to provide enough information for an approver to review the request for appropriateness, accuracy and consistency with allowed uses of FFI tax money.

We found that 366 disbursements totaling \$1,411,698 were appropriately documented. However, there was no supporting documentation for 33 disbursements totaling \$566,348 at four entities (Syracuse, Rochester TPC, Buffalo TPF and Yonkers). Further, 40 disbursements, totaling \$78,172, had inadequate documentation (Rochester TPC and Yonkers). Statements or summary sheets without invoices or receipts to show the reason for the purchase or detail of services or goods limits the ability of an approver to determine whether expenditures are for an appropriate FFI tax money use. For example, a \$6,090 disbursement (Yonkers) by credit card, reported as “Good & Welfare,” was broken down among multiple entities but did not include supporting documentation of the items purchased. Figure 6 shows the dollar value of disbursements tested for supporting documentation.

In some instances, disbursements were a transfer of FFI tax money to a third party for subsequent disbursement by that third party, which is inconsistent with Insurance Law. For example, Syracuse’s nine disbursements were payable to the Local Union (\$142,500), Syracuse Fire Department Supplemental Retirement Fund Inc. (\$390,826) and two individuals (\$5,000 and \$4,500). To assess the use, we reconciled most of the disbursements to vendor records showing the payments were for a portion of annual events, one-time retirement payments, beverages at fire scenes and training for counselors.

Figure 6: Supporting Documentation (Dollar Value of Disbursements)



Officials indicated they were following past practice or agreements or were unaware of the specific requirements related to the use of the FFI tax money. Without sufficient documentation, transparency is compromised. Further, officials and trustees cannot ensure that FFI tax money is used in a manner consistent with State and local laws, municipal charters or court-approved agreements.

Recommendations

State policymakers should:

1. Revisit the intent and structure of the FFI tax program to determine if it is operating as intended.

Officials should:

2. Ensure that all foreign fire insurance money is disbursed in accordance with State law, special act legislation, municipal charter or court-approved agreement.
3. Disburse FFI tax money only after supporting documentation is provided, reviewed and approved as a benefit to the membership.

4. Consult with counsel, as appropriate, to recoup FFI tax money inappropriately paid.

APPENDIX A

FFI USE REQUIREMENTS BY ENTITY

City of Buffalo and Buffalo TPF (Buffalo Firefighters Two Percent Fund) – The City Charter requires a foreign fire insurance tax, similar to Insurance Law Section 9104, to be paid to “the director of the treasury of the firemen’s pension fund of the city for the use and benefit of the department of fire.”¹⁹ According to the City Charter, the City must use the FFI tax to pay 10 percent of the amount it receives to the Firemen’s Association of the State of New York (FASNY) for the support or maintenance of the Volunteer Firemen’s Home at Hudson, and specifically requires the director of the treasury (City Treasury) to credit the remaining 90 percent of the proceeds to the “firemen’s pension fund of the City of Buffalo.”²⁰ When the final obligations of the firemen’s pension fund to its beneficiaries have been met – i.e., presumably upon the death of the last pension beneficiary – the balance of the assets would be turned over to the City’s general fund.²¹ A Buffalo Firefighters “Two Percent Fund” was established pursuant to an “Agreement and Declaration of Trust of the Buffalo Firefighters Two Percent Fund” (Trust Agreement)²² for the purpose of receiving money from the City generated by Section 9105 of Insurance Law. This fund is administered by three trustees, who are responsible for the receipt and disbursement of the FFI tax money to the companies of the Buffalo Fire Department for the benefit of the members. The Trust Agreement provides that the Trustees approve and disburse payments that they believe are consistent with Insurance Law Section 9105.

Syracuse (Syracuse Fire Department Association Inc.) – The special State legislation enacted in 1905 generally provided that FFI tax money received by the City be paid to the City’s Comptroller as treasurer of the “firemen’s pension fund.”²³ However, notwithstanding this special State legislation, as a result of 1991 litigation, members of the City Firefighters’ Union (paid firefighters) are entitled to share in the distribution of the FFI tax money.²⁴ Subsequent to the litigation, the City and Union entered into a “Stipulation of Settlement and Discontinuance” Agreement (Stipulation Agreement). According to the Stipulation Agreement, the balance of the FFI tax money, over a period of time, is to be paid to the Association.²⁵ It also appears that the FFI tax money received by the Association are to be used in accordance with Sections 9104 and 9105 of Insurance Law.²⁶

¹⁹ City Charter Section 25-14

²⁰ City Charter Section 25-18

²¹ City Charter Section 25-11 provides, in part, that “when the final obligation of such fund shall have been met, the balance of its assets, if any, shall be turned over to the general fund of the city, and thereupon said pension fund shall terminate.”

²² The City of Buffalo is not a party to the Trust Agreement. According to the Trust Agreement, the Trustees are to place the 2 percent money received into a separate account for each fire company.

²³ The Special Act Legislation set forth in Sections 6 and 7 of Chapter 683 of the Laws of 1905 was later codified as Sections 13-58 and 13-59 of the Syracuse “Code of Ordinances.”

²⁴ See *Syracuse Firefighters Association Local 280 vs Firemen’s Retirement Fund of the City of Syracuse*, dated July 9, 1991, and *Syracuse Firefighters Association Local 280*, supra, Index No. 89/5767, order dated July 25, 1991.

²⁵ It is not clear whether the Stipulation Agreement was approved or ordered by the Court, or otherwise has binding legal effect. For purposes of this report, however, we have assumed the propriety of custody of FFI tax money by the Association.

²⁶ The Court Order did not address how the FFI tax money may be used by the paid firefighters. Therefore, in the absence of a special act or local law addressing the issue, it is our view that the FFI tax money received by the Association be used in accordance with Sections 9104 and 9105 of Insurance Law.

City of Rochester and the Rochester TPC (Rochester Firefighters Two Percent Committee, Inc.) – In May 2002, the Rochester Firefighters Association Local 1071 union (Local 1071) commenced an action against the City seeking, among other things, a declaration by the court that Insurance Law Sections 9104 and 9105 supersede and preempt certain provisions of the City Charter relating to the receipt and use of foreign fire insurance received by the City.²⁷ After 10 years of various court proceedings, in August 2012 a settlement agreement (Agreement) between the City and Local 1071 was approved by the court to settle all matters surrounding litigation regarding the City’s “Two Percent Fund.”

The Agreement generally provides for the 2 percent FFI money to be distributed between the City and the Rochester TPC.²⁸ The Agreement also distinguishes between 2 percent FFI money received by the City before and after the date of the Agreement. For example, the Agreement generally provides that 30 percent of future FFI tax money (i.e., FFI money received after the date of the Agreement) be allocated to the City for the benefit of all active firefighters, and 70 percent of future FFI tax money allocated to the Rochester TPC for the distribution and benefit of all active firefighters. The City is to establish and maintain a separate bank account for the City’s 30 percent share of the 2 percent FFI money and a separate bank account for the firefighters’ 70 percent share. The City maintains custody of the FFI tax money in these separate accounts, pending disbursement.

In addition, the Agreement provides, among other things, that the City allocate \$3 million, held in a separate trust account in the name of the City Treasurer, for the purchase, lease or construction, furnishing and maintenance of a building for the benefit of active firefighters and the Rochester TPC. The City Treasurer disburses money from this fund (Building Fund) to the Rochester TPC after the City Council approves the “real estate agreement” for the construction, purchase or lease of a building. Other building-related disbursements are paid upon the City Treasurer’s review and approval.

Yonkers (Mutual Aid Association of the Paid Fire Department of the City of Yonkers, New York, Inc.) – The Association is responsible for administering the receipt and use of FFI tax money received each year, as required by the special act.²⁹ The special act requires the FFI tax money to be used for the care of indigent and disabled firemen and their families. The Association is a not-for-profit corporation. It is composed of paid firefighters from the City of Yonkers Fire Department. An independent welfare trust (Trust), also known as the Trust Fund or Welfare Fund, was established as a vehicle to receive and accept FFI payments for the purpose of providing the Yonkers professional firefighters and their families and dependents with various benefits.³⁰

²⁷ See Montesano v Madison, 12 Misc 3d 1197(A), aff’d 45 AD3d 1352, lv dismissed 10 NY3d 782. See also, Sections 8B-11 of the Rochester City Charter, establishing a “Firefighters’ Insurance Fund” for the receipt of 2 percent funds. The City Treasurer maintains the 2 percent money received by the City in an account referred to as the “Two Percent Fund.”

²⁸ According to the Agreement, the Rochester TPC is to be “organized under the Not-For-Profit Corporation Law of the State of New York with the legal capacity to own property and execute contracts related to the management and disbursement of Two Percent Funds.”

²⁹ See Chapter 308 of the Laws of 1912, as amended by chapter 920 of the Laws of 1962. The special act was amended on December 18, 2017, subsequent to audit fieldwork, by Chapter 499 of the Laws of 2017. The amendment provides that FFI tax money received by the Mutual Aid Association of the Paid Fire Department of the City of Yonkers Inc. be used in accordance with Insurance Law Sections 9104 and 9105.

³⁰ See Agreement and Declaration of Trust, dated June 4 1986. For purposes of this report, we did not address whether the Association, consistent with its special act, had authority to transfer custody of the FFI tax money to the Trust.

APPENDIX B

RESPONSE FROM OFFICIALS

We provided a draft copy of the global report to all six entities we audited and requested a response from each. We received responses from three entities: the City of Buffalo, the Syracuse Fire Department Association Inc., and the Rochester Firefighters Two Percent Committee Inc. The Buffalo Firefighters Two Percent Fund, the City of Rochester, and the Mutual Aid Association of the Paid Fire Department of the City of Yonkers, New York, Inc. did not respond.

Two of the three entities that responded (the Syracuse Fire Department Association Inc. and the Rochester Firefighters Two Percent Committee) generally disagreed with our findings and recommendations specific to them. Their responses also were not global in nature. Therefore, comments that were specific to the findings at these two entities are not included here. Each entity's individual report includes its response to our audit of the specific entity.

The following global comment was excerpted from the response of the City of Buffalo, which generally agreed with our findings and recommendations.

City of Buffalo – “. . . Receipt of Foreign Fire Insurance money greatly benefits our firefighters in a number of ways. These funds provide continual assistance to the day to day operations of our hardworking Firefighters.”

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We performed the following audit procedures to complete our audit objective:

- We reviewed the applicable special act, law, charter and/or court-ordered agreement to determine whether there is authority to receive and use FFI money.
- We interviewed officials and staff involved in the administration, receipt and use of FFI money for general background information and policies/procedures in place.
- We reviewed agreements and records specific to the entities authority to receive and use FFI money; and minutes, receipts, financial reports and other available documentation and correspondence related to FFI money and which addresses financial activity.
- We reviewed the available documentation for information concerning approvals on FFI expenditures.
- We reviewed canceled checks and supporting documentation, such as invoices for individual expenditures related to FFI disbursements, to determine compliance with the law, special act, Charter and/or court-ordered agreement, as appropriate.
- We determined reliability of reported FFI disbursements for our audit scope period and reviewed accounting for the FFI money to determine whether money was deposited into the bank accounts.
- We selected 439 disbursements, totaling \$2,056,218, out of about \$8 million FFI tax money received. All disbursements were traced to supporting source documentation to determine whether FFI tax money was appropriately used and properly supported. We reconciled sampled FFI disbursements to reported disbursement classifications.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
(518) 474-4015
<http://www.osc.state.ny.us/localgov/>

APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Andrew A. SanFilippo, Executive Deputy Comptroller
Gabriel F. Deyo, Deputy Comptroller
Tracey Hitchen Boyd, Assistant Comptroller

LOCAL REGIONAL OFFICE LISTING

BINGHAMTON REGIONAL OFFICE

H. Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building, Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Serving: Broome, Chenango, Cortland, Delaware,
Otsego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Jeffrey D. Mazula, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203-2510
(716) 847-3647 Fax (716) 847-3643
Email: Muni-Buffalo@osc.state.ny.us

Serving: Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming Counties

GLENS FALLS REGIONAL OFFICE

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
One Broad Street Plaza
Glens Falls, New York 12801-4396
(518) 793-0057 Fax (518) 793-5797
Email: Muni-GlensFalls@osc.state.ny.us

Serving: Albany, Clinton, Essex, Franklin,
Fulton, Hamilton, Montgomery, Rensselaer,
Saratoga, Schenectady, Warren, Washington Counties

HAUPPAUGE REGIONAL OFFICE

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Serving: Nassau and Suffolk Counties

NEWBURGH REGIONAL OFFICE

Tenneh Blamah, Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553-4725
(845) 567-0858 Fax (845) 567-0080
Email: Muni-Newburgh@osc.state.ny.us

Serving: Columbia, Dutchess, Greene, Orange,
Putnam, Rockland, Ulster, Westchester Counties

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street, Suite 522
Rochester, New York 14614-1608
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Serving: Cayuga, Chemung, Livingston, Monroe,
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates Counties

SYRACUSE REGIONAL OFFICE

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428
(315) 428-4192 Fax (315) 426-2119
Email: Muni-Syracuse@osc.state.ny.us

Serving: Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence Counties

STATEWIDE AUDITS

Ann C. Singer, Chief Examiner
State Office Building, Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313