



**THOMAS P. DiNAPOLI**  
COMPTROLLER

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**  
110 STATE STREET  
ALBANY, NEW YORK 12236

**GABRIEL F DEYO**  
DEPUTY COMPTROLLER  
DIVISION OF LOCAL GOVERNMENT  
AND SCHOOL ACCOUNTABILITY  
Tel: (518) 474-4037 Fax: (518) 486-6479

January 2018

Byron Brown, Mayor  
Mark Schroeder, Comptroller  
Members of the Common Council  
City of Buffalo  
City Hall  
Buffalo, NY 14202

Trustees of the Buffalo Firefighters Two Percent Fund  
PO Box 1038  
Buffalo, NY 14220

Report Number: S9-17-8

Dear Mayor Brown, Comptroller Schroeder, Members of the Common Council and Trustees of the Buffalo Firefighters Two Percent Fund:

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.

In accordance with these goals, we conducted an audit of FFI tax money in six entities throughout New York State. The objectives of our audit were to determine whether FFI tax money was spent in accordance with special act legislation, city charters or other applicable laws. Our objectives also included determining whether those disbursements were properly supported and accounted for separately; and whether the Treasurer, or if there is none, the chief fiscal officer of the entity receiving and disbursing FFI tax money prepared an annual report on revenues and expenditures of FFI tax money and filed it with the New York State Office of the State Comptroller (OSC), in accordance with General Municipal Law (GML). We included the City of Buffalo (City) and the Buffalo Firefighters Two Percent Fund in this audit. Within the scope of this audit, we examined FFI tax money received and used for the period January 1, 2014 through July 8, 2016. 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-a<sup>1</sup> of GML.

---

<sup>1</sup> This section generally authorizes the Comptroller to inspect and examine the records and accounts of any entity receiving and disbursing foreign fire insurance tax money, with respect to funds received after January 1, 1976.

This report of examination letter contains our findings and recommendations specific to the City and Buffalo Firefighters Two Percent Fund. We discussed the findings and recommendations with officials and considered their comments, which are included in Appendix A, in preparing this report. Officials generally agreed with our recommendations and indicated they plan to initiate corrective action. Appendix B includes our comments on actions outlined in the City's response. At the completion of our audit of the FFI tax money in the six entities, we prepared a global report that summarizes the significant issues we identified at all the entities audited.

## **Summary of Findings**

FFI tax money was not always used in accordance with Insurance Law and the City Charter. A portion of the FFI tax money intended for the firemen's pension fund, as provided for by the City Charter, totaling \$291,070, was paid to a beneficiary after she died in 1983. These payments were fraudulently collected by the daughter of a deceased beneficiary. Further, the City Charter suggests that the firemen's pension fund should have been terminated in April 2011, after the death of the last beneficiary of the fund, and the fund's assets transferred to the City's general fund. The firemen's pension fund was not terminated at that time, due at least in part to the ongoing erroneous payments to the beneficiary who had died in 1983, which continued during our audit period. City officials responded to the related draft audit report recommendation by implementing a plan of action to stop future firemen pension payments, transfer remaining pension funds to the general fund and close the pension disbursement bank account.

We also found that, while the City's fire companies generally used FFI tax money to properly pay for items for the benefit of its members, the trustees of the Buffalo Firefighters "Two Percent Fund"<sup>2</sup> were using a portion of FFI tax money without a vote or documentation to show that the expenditure was approved by the company's membership as required by Insurance Law. Our review of all 46 disbursements from the "admin" fund,<sup>3</sup> totaling \$23,991, found no documentation of membership approval.

Finally, the City was late in annually reporting the fire companies' FFI activity (receipts, expenditures and balances of FFI premiums) to OSC for both of the completed years in our audit period. In addition, the City's annual reports did not include the City's FFI activity regarding money received directly from insurance companies, to be used for the firemen's pension fund.

---

<sup>2</sup> The Buffalo Firefighters "Two Percent Fund" was established by an "Agreement and Declaration of Trust of the Buffalo Firefighters Two Percent Fund," for the purpose of receiving money from the City generated by Insurance Law Section 9105, and distributing those funds to the companies of the Buffalo Fire Department. The Buffalo Firefighters Two Percent Fund is administered by three Trustees, who are responsible for distribution of the FFI tax proceeds consistent with Insurance Law Section 9105. The propriety of the City transferring custody of the FFI tax money to the Buffalo Firefighters Two Percent Fund is outside the scope of this audit.

<sup>3</sup> The "Agreement and Declaration of Trust of the Buffalo Firefighters Two Percent Fund" provides that the Trustees place the 2 percent money received into a separate account for each fire company and authorizes the Trustees to deduct for each company's account a proportionate share of the 2 percent funds for administrative expenses. The "admin" fund is used to track deductions from each of the fire company accounts for administrative expenses that are a proportional share of budgeted expenses. The "admin" fund is used by the trustees for organizing the Two Percent Fund, collecting contributions and administering the Two Percent Fund (establishing the fund; employment of administrative, legal, accounting, expert and clerical assistance; and materials, supplies and equipment). The "admin" fund's ending balance as of April 15, 2016 was \$13,237.

## Background and Methodology

The City of Buffalo (City) is governed by a nine-member Common Council and has a population of approximately 260,000. The City has paid firefighters in 29 fire companies within the City Fire Department. The City received FFI tax money totaling \$2,786,784 over our audit period. This included \$605,392 the City considered to be tax proceeds related to Insurance Law Section 9105 and disbursed to the Buffalo Firefighters Two Percent Fund (see detail below), and \$2,181,392 remitted directly by certain out-of-state insurance companies to the City pursuant to the City Charter and deposited into the City's general fund.

Insurance Law Sections 9104 and 9105 generally impose a 2 percent tax on the premiums of fire insurance policies written by certain out-of-state insurers<sup>4</sup> against loss or damage by fire on property located in the State. 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. In general, Insurance Law provides that 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 to be paid to the fiscal officer of the authorities having jurisdiction or control of the fire department.<sup>5</sup> Furthermore, except as otherwise provided by a special act or a pre-1989 local law, 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.

The City's Treasury (Treasury) is generally responsible for administering the receipt of FFI tax money received by the City and its distribution in accordance with Insurance Law, the City Charter and the City's "Distribution Agreement Regarding Distribution of 2% Foreign Fire Tax Proceeds" (Distribution Agreement).

A Buffalo Firefighters "Two Percent Fund" has been established pursuant to an "Agreement and Declaration of Trust of the Buffalo Firefighters Two Percent Fund" (Trust Agreement)<sup>6</sup> 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

---

<sup>4</sup> Insurance Law Sections 9104 and 9105 impose a tax at the rate of 2 percent on the premiums of fire insurance policies written by certain out-of-state insurers. Although Section 9104 specifically exempts the City of Buffalo, the City's Charter imposes a similar tax, which is paid by certain out-of-state insurers directly to the City of Buffalo. Insurance Law Section 9105, which is applicable to the City, provides that the FFI tax imposed be paid by every foreign mutual fire insurance company or association authorized to do business in this State. In general, the FFI taxes imposed by Insurance Law Section 9105 are paid by the Insurer to the New York State Department of Financial Services, which, in turn, distributes the proceeds to the proper recipients. According to the Department of Financial Services (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). The fire departments in the State maintain lists of streets that they serve, which determines the allocation of funds.

<sup>5</sup> 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, the 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 the City transferring custody of the FFI tax money to the Two Percent Fund is outside the scope of this audit.

<sup>6</sup> 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.

Trust Agreement provides that the Trustees may approve and disburse payments that they believe are consistent with Insurance Law Section 9105.

To achieve our audit objectives, we conducted interviews with officials and reviewed policies/procedures and agreements. We also reviewed documentation maintained to support receipts and disbursements for the records we sampled. 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 C 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.

## **Audit Results**

### **Cash Disbursements**

The use of FFI tax money is outlined in the City Charter and Insurance Law Section 9105, each with specific uses:

- City Charter Section 25-14 imposes an FFI tax, similar to Insurance Law Section 9104,<sup>7</sup> to be paid directly by certain out-of-state insurance companies to the City for the use and benefit of the fire departments in its firemen's pension fund.
- FFI tax money remitted by certain out-of-state insurance companies, in accordance with Insurance Law Section 9105, to the New York State Department of Financial Services (DFS) is paid annually to the City, which is then required to distribute the FFI money for the benefit of the fire companies as determined by the membership. The City's distribution responsibility, and the fire companies' use of FFI tax money in accordance with Insurance Law Section 9105, are also addressed in the Trust Agreement and City's Distribution Agreement.

City Use – 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.”<sup>8</sup> According to the City Charter, the City must use the FFI tax to pay 10 percent of the amount it receives to 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.”<sup>9</sup> 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.<sup>10</sup>

---

<sup>7</sup> As previously noted, Insurance Law Section 9104 specifically exempts the City of Buffalo.

<sup>8</sup> City Charter Section 25-14.

<sup>9</sup> City Charter Section 25-18.

<sup>10</sup> 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.”

During the audit period, the City of Buffalo used a total of \$2,181,394<sup>11</sup> collected directly from certain out-of-state insurance companies to pay 10 percent, or \$218,139, to FASNY,<sup>12</sup> with the balance used to pay the beneficiary of the firemen’s pension fund, totaling \$26,180, and then to offset general fund expenditures.

We selected three firemen’s pension fund benefit payments, totaling \$2,805 (one from each year of the audit period), to determine the appropriateness of the City’s use of FFI and whether the pension fund was still active.<sup>13</sup> We found that the pension payments were still being paid to a deceased beneficiary who had died in 1983 and would have been 104 at the time of our audit. Since 1983, a family member was fraudulently collecting these pension payments, totaling about \$26,180 for the audit period and estimated to be \$291,070 in total since the beneficiary’s death.<sup>14</sup> The firemen’s pension fund listed this individual as its last remaining beneficiary. City officials told us that there were personnel changes during our audit period and they were relying on controls (such as an annual notarized certification) that failed to identify the death. The remaining FFI tax money was deposited into the City’s general fund, which according to the Charter is to occur when the final obligation of the firemen’s pension fund has been met, and used to offset general fund expenditures. Subsequent to issuance of the draft audit report, City officials responded that they have implemented a plan of action to stop future firemen pension payments, transfer remaining pension funds to the general fund and close the pension disbursement bank account.

Fire Companies’ Use – The trustees of the Two Percent Fund generally used the FFI tax money for the benefit of the fire companies to pay for or reimburse expenditures approved by the membership, as required by the Insurance Law. Such disbursements reported to OSC include cable service, furniture, coffee, exercise equipment, donations, boots, uniforms, appliances, newspapers and water service. Figure 1 shows the types of reported FFI disbursements for 2014 (\$316,271) and 2015 (\$227,266) of the fire companies.

<b>Figure 1: Reported Disbursements – Totals by Classification</b>		
<b>Description</b>	<b>2015</b>	<b>2014</b>
Cable	\$35,246.05	\$43,297.57
Chairs/Couches	\$21,384.80	\$27,727.33
Coffee	\$20,066.10	\$22,212.83
Exercise Equipment & Repair	\$19,412.35	\$22,367.97
Mattresses	\$16,361.28	\$6,721.39
Donations	\$16,150.00	\$23,175.00
Admin Fund <sup>a</sup>	\$15,452.32	\$21,675.64
Boots	\$11,275.20	\$33,245.12
Water System	\$10,514.90	\$6,687.99
Refrigerators & repair	\$7,308.27	\$4,345.09

<sup>11</sup> \$671,079.89 in 2016, \$846,531.38 in 2015 and \$663,781.13 in 2014

<sup>12</sup> Payments in 2014 through 2016 to FASNY, totaling \$218,139, were traced to canceled checks. The annual amounts were \$66,378, \$84,653 and \$67,108, respectively.

<sup>13</sup> See Appendix C for methodology.

<sup>14</sup> The daughter of the deceased beneficiary 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 daughter 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.

<b>Figure 1: Reported Disbursements – Totals by Classification</b>		
<b>Description</b>	<b>2015</b>	<b>2014</b>
Tools	\$6,819.21	\$922.92
Uniforms	\$6,580.51	\$22,570.31
TV & or TV Mount & or Gaming System	\$5,625.02	\$16,246.17
Computer Equipment	\$5,546.97	\$3,043.28
Flashlights	\$5,543.45	\$13,452.77
Newspaper	\$4,054.50	\$3,670.00
Stove	\$2,785.47	\$3,146.32
Dishwasher	\$2,628.00	\$2,362.51
A/C Unit	\$2,058.44	\$499.15
Ice Maker	\$1,834.00	-
Shirts	\$1,752.12	-
Tool Box	\$1,163.91	-
Weed Wacker/Lawn Mower	\$1,151.82	-
Commissary	\$1,044.05	-
Patio Cover Material	\$976.73	-
Decals	\$625.31	\$364.86
Repairs	\$512.13	\$299.60
House Party	\$500.00	\$1,196.25
Smoker	\$489.36	\$630.00
Pickle Ball Set	\$449.99	-
Kitchen Items	\$431.49	\$5,157.60
Stereo	\$387.04	\$2,172.78
Knife Sharpening	\$217.44	\$231.03
Lowe's	\$174.60	-
Ladder	\$162.04	\$96.79
Shop Vac	\$151.13	\$99.00
Hoses and Nozzles	\$104.27	-
Membership	\$100.00	-
Microwave	\$100.00	\$249.02
Bank Error	\$81.02	-
Remote Transmitters	\$34.81	-
Hydrant Map	\$9.79	-
Basketball Hoop	-	\$2,622.48
Bubble Hockey	-	\$2,000.00
Check Charge	-	\$1,280.72
Boot/Glove Dryer	-	\$134.00
Dart Board	-	\$3,806.24
Fans	-	\$505.57
Grills	-	\$12,900.06
Outdoor Furniture	-	\$2,714.25

<b>Figure 1: Reported Disbursements – Totals by Classification</b>		
<b>Description</b>	<b>2015</b>	<b>2014</b>
Photos	-	\$268.03
Ping Pong Table	-	\$809.98
Pop Machine	-	\$1,000.00
Pressure Washer		\$299.00
Supplies	-	\$63.90
<b>Total</b>	<b>\$227,265.89</b>	<b>\$316,270.52</b>
<sup>a</sup> These disbursements are captured and reported to OSC from the fire company expenditure activity.		

For the period January 2014 through July 8, 2016, the City distributed FFI money totaling \$605,392 for use by the members of the fire companies.<sup>15</sup> We selected 187 disbursements from the fire companies' records,<sup>16</sup> totaling \$141,422, to determine whether FFI was used appropriately, supported properly and accounted for separately, and whether expenditures were reported accurately. Fifteen disbursements totaling \$7,299 (all payable for expenses of the "admin" fund) did not have documentation of membership approval, of the disbursement classification or purpose. (We determined that the expenditure classifications for the remaining 172 were accurately reported.)

Due to the lack of documentation, we tested 46 disbursements, totaling \$23,991, from the "admin" fund. Most of the FFI tax money used from the "admin" fund was for 34 disbursements (\$20,400) to the trustees for quarterly compensation payments, which the Trust Agreement authorizes;<sup>17</sup> the other 12 disbursements (\$3,591) were for minor expenses of office supplies, post office fees, printing, and attorney fees. However, none of the disbursements had documentation showing the expenditure was approved by the company's membership. The Trust Agreement provisions allow these disbursements to be reported as expenditures of the fire companies, although the funds are transferred to a separate account (the "admin" fund) and used by the trustees as needed. Further, the Trust Agreement does not require members to vote on these expenditures nor the administrative budget;<sup>18</sup> however, the lack of approval by the membership is inconsistent with Insurance Law.

We conducted a physical asset verification test of 21 assets purchased with FFI tax money and found no exceptions. We verified that 19 assets were in the fire company location that purchased the items, and reconciled the remaining two items.

The efforts of City officials and trustees to use FFI tax money, to disburse these funds, consistent with State law enforces the purpose for which the law was enacted.

<sup>15</sup> \$181,371.98 for 2016; \$213,133.17 for 2015; and \$210,886.37 for 2014

<sup>16</sup> See Appendix C for methodology.

<sup>17</sup> The Trust Agreement provides that "the Trustees may receive compensation as determined by the majority vote thereof."

<sup>18</sup> Sections 1.4, 4.1, 6.9, 6.14, 6.23, 9.4, 9.5

## **Annual Financial Report**

GML requires the treasurer, or if there is none, the chief fiscal officer, of organizations that receive and disburse FFI tax money to file with the Office of the State Comptroller an annual report of the receipts, expenditures and balances related to such money.

The trustees submitted reports to the City of Buffalo to file with OSC for the calendar years 2014 and 2015; however, the reports were not received in a timely manner by OSC. They were due prior to March each year, but were received on June 8, 2015 and June 16, 2016, respectively. In addition, while the reports included fire company FFI activity, they lacked the revenues, expenditures and balances related to the City's FFI activity. By filing the annual report late and not including the FFI activity, the City is not in compliance with this statutory requirement, which helps ensure the transparency of the City's use of FFI tax money.

## **Recommendations**

City officials should:

1. Work with legal counsel to collect restitution for inappropriate FFI payments made.
2. Consult with legal counsel as to the appropriate status of the firefighters' pension fund and, if appropriate, deposit the assets remaining into the City's general fund. Auditor's note: Subsequent to issuance of the draft audit report, officials responded that they have implemented a plan of action to stop future firemen pension payments, transfer remaining pension funds to the general fund and close the pension disbursement bank account.

Trustees of the Buffalo Firefighters Two Percent Fund should:

3. Require proof of majority membership approval prior to payment of FFI tax money to help ensure the FFI money received is used for the benefit of the fire company as determined by the company's membership.
4. Consider seeking legal counsel to amend the Trust Agreement to be consistent with the statutory requirement for membership approval of FFI expenditures.

The City Treasurer should:

5. Prepare a complete annual report of the receipts, expenditures and balances related to FFI tax money, including those of the fire companies and of the City, and report to OSC in a timely manner.

The Council 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 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. The Council should make the CAP available for public review in the Clerk's office.

We thank the officials and staff of the City of Buffalo and trustees of the Buffalo Firefighters Two Percent Fund for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## **APPENDIX A**

### **RESPONSE FROM OFFICIALS**

The response to this audit from City officials and trustees of the Buffalo Firefighters Two Percent Fund can be found on the following pages.



**CITY OF BUFFALO**  
**BYRON W. BROWN**  
**MAYOR**



November 13, 2017

Ms. Ann C. Singer  
 Chief Examiner  
 Office of the State Comptroller  
 State Office Building, Suite 1702  
 44 Hawley Street  
 Binghamton, New York 1390-4417

Dear Ms. Singer,

I would like to thank you and your staff for the thorough audit of the City of Buffalo's Foreign Fire Insurance fund. The employees were professional in every aspect of the audit. This response will include both the Audit Response and the Corrective Audit Plans.

**Audit Recommendation:**

- 1.) Work with legal counsel to collect restitution for inappropriate FFI payments made.

**Implementation Plan of Action:**

- The city immediately discontinued payments to the Fire Pension beneficiary once there was a question of legitimacy of the recipient. During this same timeframe, the Law Department of the City of Buffalo was informed that New York State will be exclusively handling the matter going forward.
- Information from the conviction of the family member collecting inappropriate funds will be forwarded to the City Law Department so that they may move forward to collect restitution of the funds.

**Audit Recommendation:**

- 2.) Consult with legal counsel as to the appropriate status of the firefighters' pension fund and, if appropriate, deposit the assets remaining in the City's general fund.

See Note 1 Page 16
--------------------------

**Implementation Plan of Action:**

- At the meeting of the Board of Police and Fire Pension on December 8, 2016, the payment of \$935 to the assumed last remaining member of the pension fund was denied and removed based on proof that the person had died in 1983. A copy of the meeting minutes is attached. No further payments have been taken by this Board in relation to the Fire Pension.
- At the meeting of the Board of Police and Fire Pension on November 9, 2017, closure of the Foreign Fire Insurance Pension account was approved. A copy of the meeting minutes is attached.

- The remaining funds in the Fireman's Pension Fund bank account which totaled \$5,095.59 were transfer to the City of Buffalo general fund on October 24, 2017. A copy of the October 2017 bank statement, a letter from M&T bank stating the account was closed and the journal entry prepared to record the transaction is attached.

**Audit Recommendation:**

Audit Recommendations #3 through #4 are directed to the Trustees of the Buffalo Firefighters.

**Implementation Plan of Action:**

- Trustees will respond directly to this recommendation.

**Audit Recommendation:**

5.) Prepare a complete annual report of the receipts, expenditures and balances related to FFI tax money, including those of the fire companies and of the City, and report to OSC in a timely manner.

- The City had transitioned the Foreign Fire responsibilities due to retirements. During this this time, the annual reports to New York State moved to June, the end of the City fiscal year. This oversight will be corrected immediately with a letter to the Trustees of the FFI to submit their expenses, annually by January 31<sup>st</sup> of each year. This will allow a timely filing with OSC by the end of February.
- A copy of the draft letter is attached.

Thank you again for your review of our process:

 Byron W. Brown  
Mayor

# CREIGHTON, JOHNSEN & GIROUX

ATTORNEYS AT LAW

---

CATHERINE CREIGHTON  
JONATHAN G. JOHNSEN  
E. JOSEPH GIROUX, JR.  
IAN HAYES  
CANDACE L. MORRISON

EDWARD J. SMITH, III  
LUKE A. BROWN  
*Of Counsel*

November 16, 2017

Gabriel F. Deyo  
Deputy Comptroller  
Division of Local Government  
And School Accountability  
Office of the State Comptroller  
State of New York  
110 State Street  
Albany, NY 12236

Re: RESPONSE AND CORRECTIVE ACTION PLAN  
The Trustees of the Buffalo Firefighters Two Percent Fund  
OSC Audit of Foreign Fire Insurance Tax Monies  
Fire Department of the City of Buffalo  
Report Number: S9-17-8

Dear Deputy Comptroller Deyo:

We represent the Trustees of the Buffalo Firefighters Two Percent Fund with regard to the above-referenced Audit. Please accept this letter on behalf of the Trustees of the Buffalo Firefighters Two Percent Fund as the response to the Draft Audit Report dated October 18 2017 and as a corrective action plan to address the recommendations of the Audit.

## **Response to Audit**

The Trustees of the Buffalo Firefighters Two Percent Fund oversee the expenditures of the Fire Companies in the Fire Department of the City of Buffalo. Their oversight ensures that all expenditures are in compliance with Insurance Law Section 9105.

The Audit report found that all FFI monies were properly expended for the benefit of the Firefighters as required by law. The Audit noted that the administrative expenses of the Trustees, while allowable, were not properly documented as approved by the company's membership.

560 ELLICOTT SQUARE BUILDING ▪ 295 MAIN STREET ▪ BUFFALO NEW YORK 14203  
TELEPHONE: (716) 854-0007 FAX: (716) 854-0004  
cpjglaborlaw.com



The Trustees believed that the vote each year for a replacement Trustee, together with the publishing of the administrative expenses to be deducted from each company, satisfied the requirement of Section 9105(3) that the funds be used for the benefit of, as determined by the members of, the fire company. The audit report takes the position that the administrative expenditures should have been approved separately by vote of the members of the companies. The Trustees do not object to having all future administrative expenses approved by a separate vote of the membership of the companies as suggested by the Audit.

### **Corrective Action Plan**

While the Trustees believed that they have acted properly in obtaining the consent for administrative expenses by publishing the anticipated expenses and having an annual Trustee vote, in the future the Trustee will implement the following actions:

#### **1. Audit Recommendation:**

Require proof of majority membership approval prior to payment of FFI tax money to help ensure the FFI monies received are used for the benefit of the fire company as determined by the company membership.

#### **Implementation Plan of Action:**

The Trustees shall, at the time of the annual election for a replacement trustee, publish a list of the anticipated administrative expenses and the amount of the deduction required from each member of a company for the upcoming year and present such list of administrative expenses for a separate vote by the members of the companies.

#### **2. Audit Recommendation:**

Consider seeking legal counsel to amend the Trust Agreement to be consistent with the statutory requirement for membership approval of FFI expenditures.

#### **Implementation Plan of Action:**

The Trustees shall engage legal counsel and amend the Trust Agreement to reflect that any and all administrative expenses of the Trustees must be approved by the members of the companies.

**3. Audit Recommendation:**

City Treasurer to prepare a complete annual report of the receipts, expenditures and balances related to FFI tax money, including those of the fire companies and of the City, and report to OSC in a timely manner.

**Implementation Plan of Action**

The Trustees will forward to the City the records of receipts, expenditures and balances for the fire companies so that the City can submit a timely report to Office of the State Controller.

**4. Person Responsible for Implementation:**

The Trustees of the Buffalo Firefighters Two Percent Fund

Very truly yours,

CREIGHTON, JOHNSEN & GIROUX

By: Jonathan G. Johnsen

JGJ:lrc

cc: Trustees of Buffalo Firefighters Two Percent Fund

## **APPENDIX B**

### **OSC COMMENTS ON THE CITY'S RESPONSE**

#### Note 1

In the City's response to audit recommendation 2, officials implemented actions subsequent to the audit and provided the following documents:

- Board of Police and Fire Pension agenda dated November 9, 2017 listing action item for Foreign Fire Insurance Pension bank account closure approval to be adopted.
- Board of Police and Fire Pension meeting minutes dated December 8, 2017 indicating no further payments in relation to the Fire Pension.
- Firemens Pension Fund Disbursements bank account for October 2017 showing transfer of account balance out of the account on October 24, 2017; leaving a zero balance in the account.
- M&T Bank letter dated November 1, 2017 stating that the Firemens Pension Fund Disbursements Account was closed on October 25, 2017, as per the City's request.
- Journal entry to record the transaction.

We have noted the City's corrective action in the report.

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

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

- Reviewed the City Charter Section 25-14 to determine whether there is authority to receive and use FFI.
- Interviewed officials and staff involved in the administration, receipt and use of FFI for general background information and policies/procedures in place.
- Reviewed records including “Agreement and Declaration of Trust of the Buffalo Firefighters Two Percent Fund” (Trust Agreement) between the firefighters employed by the City who are members of their respective local unions; the City’s “Agreement Regarding Distribution of 2% Foreign Fire Insurance Tax Proceeds” (Distribution Agreement); and minutes, receipts, financial reports and other available documentation and correspondence related to FFI and which addresses financial activity.
- Reviewed the available documentation for information concerning approvals on FFI expenditures.
- Reviewed canceled checks and supporting documentation, such as invoices for individual expenditures related to FFI disbursements, to determine compliance with the law, City Charter and Distribution Agreement, as appropriate.
- 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.
- Selected five of the 29 fire companies for disbursement testing based on FFI revenue in the audit period provided by the City. All 187 disbursements, totaling \$141,422 were traced to supporting source documentation to ascertain whether FFI tax money was appropriately used, properly supported and accurately reported. We reconciled sampled FFI disbursements to reported disbursement classifications.
- Traced all 46 disbursements from the “admin” fund in the audit period to supporting documentation to ascertain whether FFI tax money was appropriately used, properly supported and accurately reported. We reconciled FFI disbursements to reported disbursement classifications.
- Selected 21 assets from the five fire company locations used in disbursement testing, based on the most recent and identifiable purchases, to determine whether the asset is currently in the possession of the fire company that purchased it. Where necessary, we reconciled our observations to fire company records.

- Selected all three FASNY disbursements made by the City that represented 10 percent of the proceeds of the tax imposed by Section 9104, and three beneficiary disbursements of the firemen's pension fund for the audit period. We selected one beneficiary disbursement for each of the three years in our audit period, based on the current month of fieldwork (2015 and 2014) and the most recent disbursement that cleared the bank (April 2016), to determine whether the use of FFI was appropriate and whether the pension fund was still active.
- We compared the annual report filed with OSC by the City with the OSC report on file, including date received.

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.