

City of Hornell

Foreign Fire Insurance Tax Money

MARCH 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

City of Hornell

Audit Objective

Determine whether City of Hornell (City) officials provided oversight of foreign fire insurance (FFI) tax money.

Key Findings

Officials did not adopt policies and procedures guiding the handling of FFI tax money and provide oversight to ensure accurate records were maintained, and adequate supporting documentation and approvals were obtained.

- The Chamberlain did not maintain custody of the FFI tax money.
- The Fire Chief was solely responsible for disbursing, recording and reporting all transactions related to FFI tax money.
- The Fire Chief maintained inaccurate accounting records and reports and expenditures totaling \$42,410 lacked support.
- FFI disbursements were not approved by Department members before payments were made.

Key Recommendations

- Consider developing comprehensive policies and procedures related to FFI tax money.
- Ensure the Chamberlain adequately maintains custody of the FFI tax money, and expenditures are adequately supported and approved before payment.

City officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The City is located in Steuben County and has a population of approximately 8,600. The City is governed by its Charter, State statutes and local laws and ordinances. The Charter outlines the powers and duties of the 10-member Common Council (Council), Mayor and City Chamberlain, and establishes the Fire Department (Department), which is under the Department of Public Safety.

The Department provides fire protection services to the City and ambulance services to the City and the Town of Hornellsville. The Department is overseen by the Fire Chief who is responsible for directing and controlling Department operations, including FFI tax money.

Quick Facts

January 1, 2018 – June 30, 2020

FFI Tax Money Received	\$51,589
FFI Expenditures	\$51,136
Paid Firefighters	21

Audit Period

April 1, 2018 – September 21, 2020. We extended our audit period back to January 1, 2018 for our review of FFI expenditures.

Foreign Fire Insurance Tax Money

FFI tax money is generated from a tax, generally at a rate of two percent 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.¹ The out-of-state insurer will collect and remit the tax money generally to the New York State Department of Financial Services (DFS), which distributes the proceeds to the proper recipients (typically fire departments, fire companies or benevolent associations).

Who Should Maintain Custody of FFI Tax Money?

In general, the New York State Insurance Law (Insurance Law) states that the treasurer or other fiscal officer of the fire department providing fire protection coverage to the insured property receives the FFI tax money.² 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 and control of such fire department. However, in some instances, an entity may be designated by special law to receive the FFI tax money, such as by a special act of the State Legislature, expressly stating that a benevolent association is responsible for maintaining custody.

The Chamberlain Did Not Maintain Custody of FFI Tax Money

There is no treasurer or other fiscal officer of the fire department. Although we were informed during our audit of a New York State Assembly bill, introduced in 1970, to establish the Hornell Firefighter's Benevolent Association (Association),³ we found no indication that the Assembly bill was chaptered into law, or the Association was ever incorporated.

Furthermore, the Fire Chief and Department employees told us the Association was not currently operational and had not been during their tenure with the Department, in excess of 10 years. We are unaware of any special act of the State Legislature requiring the City's FFI tax money to be held by the Association.

Department members provided us with bylaws of a not-for-profit corporation (NFPC) that state that the NFPC is responsible for collecting the FFI tax money and using the funds to benefit the members.⁴ However, we found no indication of

¹ Unless a special law enacted by the State Legislature or a local law enacted before 1989 (e.g., Charter) provides otherwise, the distribution and use of FFI tax money is governed by New York State Insurance Law (Insurance Law), Sections 9104 and 9105.

² Insurance Law, Sections 9104 and 9105

³ Refer to New York State Assembly Bill Number 4623, Introduced February 9, 1970.

⁴ The bylaws of the not-for-profit corporation (NFPC) state the NFPC's purpose is to promote a spirit of friendship and benevolence among its members, which includes all current and former active members of the Department.

a special act of the State Legislature authorizing the NFPC to be the custodian of FFI tax money.

In the absence of a Department treasurer, other fiscal officer or a special act of the State Legislature, Insurance Law requires the Chamberlain be responsible for custody of the FFI tax money.⁵ However, we found that the Chamberlain did not maintain custody of the FFI tax money. Instead, the Department Fire Chief maintained custody of the directly deposited FFI tax money as sole signatory of a bank account, which is neither a City nor Department bank account.

How Should Officials Ensure FFI Tax Money Is Used Appropriately?

In the absence of a special law or a local law (enacted before 1989) stating otherwise, FFI tax money may be spent for any purpose that the membership of a fire department or company determine to be for the benefit of the fire department or company, provided the expenditure is not illegal or contrary to public policy.

City officials should adopt policies and procedures to guide the handling of FFI tax money, which should include maintaining complete and accurate records with adequate documentation, such as claims or vouchers with attached receipts, invoices or bills to support all financial activity. These policies and procedures should require monthly reconciliations of bank account balances to the remaining balance of FFI tax money in the accounting records.

Annually, the custodian of FFI tax money must prepare a report on FFI fund revenues, expenditures and remaining balances and file it with the New York State Office of the State Comptroller Office (OSC). This report must be filed with OSC no later than the last day of February of each year.

Officials Did Not Monitor FFI Tax Money Expenditures

City Officials did not implement policies and procedures to help guide the handling of FFI tax money, including those for the receipt, management and expenditure of these funds.

Officials provided no oversight of FFI tax money and had no formal expenditure approval process before FFI tax money was expended. The Fire Chief was solely responsible for the custody and recording of FFI tax money receipts and disbursements and preparing and submitting annual reports of FFI tax money to OSC.

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⁵ The City's Charter makes reference to a Department of Public Safety, which among other things, is responsible for "[t]he care, custody and control of all property...now used by the Fire Department..." (Refer to Charter Section, C-110). The Charter states that the City Chamberlain, shall be ex officio Treasurer of the Department of Public Safety (Refer to Charter Section, C-172).

Department members told us that occasionally Department employees would verbally discuss expenditures, but in general, the Fire Chief would simply write checks to reimburse current or former Department firefighters for purchases made, upon their request. The Fire Chief said individuals would give him receipts documenting their purchases and he would total up the receipts and reimburse the members. The Fire Chief recorded FFI transactions in a spreadsheet but the spreadsheet entries were not reconciled to the monthly bank statements.

Because of the lack of oversight and FFI tax money is reported on a calendar year end basis, we reviewed all FFI tax money records for the period January 1, 2018 through June 30, 2020. Our review included bank statements, spreadsheets, available supporting documentation for expenditures and the 2018 and 2019 annual reports submitted to OSC.

We found FFI tax money received totaled \$51,589 from January 1, 2018 through June 30, 2020, and insurance proceeds for damage at “the Farm” totaling \$113,567 were also deposited into this account in 2018. During this period, \$112,219 was paid from the bank account, which included both FFI expenditures and insurance claim related expenditures. The insurance proceeds and expenditures pertained to a house that sits on 100 plus acres of land (Farm) that current and former Department members use.

We compared the bank statements to the Fire Chief’s records and reports and found the Fire Chief’s records were inaccurate and incomplete. All FFI tax money expenditures were not recorded in his spreadsheet or properly reported in the annual reports he filed.

For the period January 1, 2018 through June 30, 2020, repair costs related to the insurance claim totaled \$61,083 and FFI expenditures totaled \$51,136. However, the Fire Chief recorded FFI expenditures totaling \$41,519, a difference of \$9,617 (Figure 1).

Figure 1: Actual FFI Expenditures vs. Amounts Recorded and Reported

FFI Expenditures	Actual	Recorded	Reported
2018	\$23,056	\$22,617	\$22,616
2019	18,303	13,640	14,210
January 1 – June 30, 2020	9,777	5,262	N/A
Total	\$51,136	\$41,519	N/A

We also found that \$42,410 (38 percent) of total expenditures paid from the bank account lacked supporting documentation. The majority of unsupported expenditures related to insurance claims expenditures for roof and electrical repair and tree removal totaling \$33,283 (79 percent).

The remaining unsupported expenditures and supported FFI expenditures appeared to be expenditures for the repair and maintenance of “the Farm”, furniture and food at the fire station and occasional retirement parties of Department employees, which members confirmed were appropriate use of FFI tax money to benefit all members.

While we did not identify any inappropriate FFI expenditures, without adequate supporting documentation, accurate records and reports, reconciliations and approvals, there is an increased risk that fraud, waste or abuse could occur and go undetected.

What Do We Recommend?

City officials should:

1. Consider developing policies and procedures guiding the handling of FFI tax money.
2. Take steps to ensure the Chamberlain maintains custody of the FFI tax money and accurately records related transactions.
3. Ensure claims are approved before payment and have adequate supporting documentation.

Appendix A: Response From City Officials



CITY OF HORNELL

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JOHN J. BUCKLEY, MAYOR



February 4, 2021

Edward V. Grant Jr., Chief Examiner
The Powers Building
16 West Main Street Suite 522
Rochester, NY 14614-1608

RE: City of Hornell Foreign Fire Insurance Funds Audit – Draft response

Dear Mr. Grant:

I am writing on behalf of the City of Hornell in response to the findings in the Foreign Fire Insurance Funds audit draft report.

We have reviewed the draft report and agree that City of Hornell Official's did not provide the recommended oversight of foreign fire insurance (FFI) tax money. We will take your key recommendations into consideration and review these findings and recommendations with our Audit Committee and Council and present you with a Corrective Action Plan.

I appreciate your office's time and recommendations and thank you for providing us with the draft audit. I look forward to presenting you with our CAP as soon as possible.

Sincerely,

John J. Buckley
Mayor

JJB/alp

Appendix B: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We reviewed the Charter for guidance relating to the handling of FFI tax money.
- We examined documentation supporting the FFI tax money received and FFI expenditures, financial records and bank statements.
- We interviewed City officials about the current process for FFI expenditures.
- We obtained FFI annual reports and compared these reports to available records.
- We researched special acts and legislation regarding the appropriate custody of FFI tax money for the City and consulted with our legal department to verify the lack of any special acts and legislation.
- We interviewed current and former Department employees who are also members of the NFPC to gain an understanding of the organization's history and involvement with FFI tax money.
- We reviewed documentation provided by the Fire Chief and Department employees such as the NFPC bylaws, news articles, legislative bills and organizational information from the Department of State and provided this documentation to our legal department to aid in the verification process.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.

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.

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 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 Council to make the CAP available for public review in the City Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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