



# City of New York

## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## FINANCIAL AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Richmond County  
Public Administrator's Compliance with  
Financial Reporting Requirements

FK21-066A

**December 22, 2021**

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

December 22, 2021

To the Residents of the City of New York:

My office has audited the Office of the Richmond County Public Administrator (RCPA) to determine whether the RCPA complied with the financial reporting requirements of the United States Code, Title 26 – Internal Revenue Code. We audit entities such as the RCPA to increase accountability and to ensure that they comply with applicable laws and guidelines.

The audit found that the RCPA did not comply with Internal Revenue Service (IRS) requirements for collecting and validating vendors' tax information and IRS requirements for reporting income that it disbursed from the suspense account to an employee.

The audit makes five recommendations to the RCPA, including that the RCPA should collect W-8s or W-9s from all vendors, use the IRS TIN matching service to validate vendor name and TIN combinations, appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s, use W-2s to report wages and other compensation to the IRS for employees who are paid with RCPA suspense account funds, and withhold federal income, Social Security, and Medicare taxes for employees who are paid with RCPA suspense account funds.

The results of the audit have been discussed with RCPA officials, and their comments have been considered in preparing this report. The RCPA's complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

## Audit Report on the Richmond County Public Administrator's Compliance with Financial Reporting Requirements

FK21-066A

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### EXECUTIVE SUMMARY

New York City (the City) has one Public Administrator (PA) in each of the counties that make up the City. Each of these PAs is appointed by the judge or judges of the Surrogate's Court of their respective counties. The PAs are responsible for administering the estates of individuals who die intestate (i.e., without a will) or when no other appropriate individual is willing or qualified to administer the estate. The Office of the Richmond County Public Administrator (RCPA) administers such estates in Richmond County. As the estate administrator, the RCPA has a fiduciary duty to the estate that requires the RCPA, among other things, to conduct thorough investigations to discover all assets and safeguard them; pay decedents' bills and taxes; account for and maintain documentation to support estate activities and transactions; and distribute estate proceeds to decedents' heirs and distributees. Article 11 of the New York State Surrogate's Court Procedure Act (SCPA) and the Guidelines for the Operations of the Public Administrators of New York State (PA Guidelines) govern the RCPA's estate-administration process.

The RCPA is managed by a Public Administrator and a Deputy Public Administrator who were appointed in January 2019 and February 2019, respectively. The Public Administrator's and Deputy Public Administrator's salaries are included annually in the expense budget of the City pursuant to SCPA §1105(3). The Public Administrator is also authorized to appoint other employees "as may be allowed annually in the budget of the [C]ity" pursuant to SCPA §1108(1). In addition, the PA Guidelines authorize the Public Administrator to maintain a "suspense account" which contains, among other things, fees allowed by the court for PA expenses, and to "use the suspense account to pay office expenses not funded by the PA's budget."

The RCPA reported that it made suspense account disbursements totaling \$95,095 during Calendar Year 2019.

## **Audit Findings and Conclusion**

The RCPA did not comply with Internal Revenue Service (IRS) requirements for collecting and validating vendors' tax information and IRS requirements for reporting income that it disbursed from the suspense account to an employee.

## **Audit Recommendations**

Based on our findings, we made the following five recommendations to the RCPA:

- The RCPA should collect W-8s or W-9s from all vendors.
- The RCPA should use the IRS TIN matching service to validate vendor name and TIN combinations.
- The RCPA should appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s.
- The RCPA should use W-2s to report wages and other compensation to the IRS for employees who are paid with RCPA suspense account funds.
- The RCPA should withhold federal income, Social Security, and Medicare taxes for employees who are paid with RCPA suspense account funds.

## **Agency Response**

In its response, the RCPA stated that “we have been in touch with our accountant and he agrees with all findings and will correctly handle all filing requirements for 1099s in 2021 and all years going forward.”

# AUDIT REPORT

## Background

The City has one PA in each of the counties that make up the City. These PAs are appointed by the judge or judges of the Surrogate's Court of their respective counties. These PAs are responsible for administering the estates of individuals who die intestate (i.e., without a will) or when no other appropriate individual is willing or qualified to administer the estate. The RCPA administers such estates in Richmond County. As the estate administrator, the RCPA has a fiduciary duty to the estate that requires the RCPA to, among other things, conduct thorough investigations to discover all assets and safeguard them; pay decedents' bills and taxes; account for and maintain documentation to support estate activities and transactions; and distribute estate proceeds to decedents' heirs and distributees. Article 11 of the SCPA and the PA Guidelines govern the RCPA's estate-administration process.

The RCPA is managed by a Public Administrator and a Deputy Public Administrator who were appointed in January 2019 and February 2019, respectively. The Public Administrator's and Deputy Public Administrator's salaries are included annually in the expense budget of the City pursuant to SCPA §1105(3). The Public Administrator is also authorized to appoint other employees "as may be allowed annually in the budget of the [C]ity" pursuant to SCPA §1108(1).

In addition, the PAGuidelines authorize the Public Administrator to maintain a "suspense account" which contains, among other things, fees allowed by the court for PA expenses, and to "use the suspense account to pay office expenses not funded by the PA's budget."<sup>1</sup> During Calendar Year 2019, the RCPA reported that it made suspense account disbursements totaling \$95,095, which included, among other things, payments made to vendors for providing goods and services to the PA office and payments made to employees.

## Objective

The objective of this audit was to determine whether the RCPA complied with the financial reporting requirements of the United States Code, Title 26 - Internal Revenue Code.

## Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Calendar Year 2019. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

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<sup>1</sup> SCPA 1106(3) authorizes Public Administrators to retain "a reasonable amount for the expenses of his office, to be fixed by the court," which is currently set at a one percent commission of the gross value of each estate.

## Discussion of Audit Results

The matters covered in this report were discussed with RCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to the RCPA and was discussed at an exit conference on November 23, 2021. On December 10, 2021, we submitted a draft report to the RCPA with a request for written comments. We received a written response from the RCPA on December 20, 2021.

In its response, the RCPA stated that “we have been in touch with our accountant and he agrees with all findings and will correctly handle all filing requirements for 1099s in 2021 and all years going forward.”

The full text of the RCPA’s response is included as an addendum to this report.

## FINDINGS AND RECOMMENDATIONS

The RCPA did not comply with IRS requirements for collecting and validating vendors' tax information and IRS requirements for reporting income that it disbursed from the suspense account to an employee. These findings are discussed in the following sections of the report.

### The RCPA Did Not Collect and Validate Vendors' Tax Information

The RCPA uses suspense account funds to pay office expenses, which include, among other things, payments to vendors for providing goods and services to the PA office. In accordance with its management and oversight responsibilities, the RCPA must fully comply with all IRS requirements for the submission of Form 1099-MISC (1099) for each person, other than employees, it pays during the year.<sup>2</sup> 26 CFR §1.6041-1(a)(1)(i) states that

Every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income. . . . For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

Further, 26 CFR §1.6041-1(a)(1)(i)(A) states that income includes “[s]alaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more.”

As a payor required to file 1099s, the RCPA should use Form W-8 (W-8), Form W-9 (W-9), or an acceptable substitute to collect each vendor's name, tax identification number (“TIN”), and federal tax classification and to obtain certifications from vendors that TINs are correct and that they are not subject to backup withholding.<sup>3</sup> The IRS Instructions for the Requester of Form W-9 state that requestors should

Use Form W-9 to request the taxpayer identification number (TIN) of a U.S. person (including a resident alien) and to request certain certifications and claims for exemption. . . . For federal tax purposes, a U.S. person includes but is not limited to:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.

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<sup>2</sup> 26 CFR §1.6041-1(a)(2) states that the “return required by subparagraph (1) of this paragraph shall be made on Forms 1096 [Annual Summary and Transmittal of U.S. Information Returns] and 1099 [Miscellaneous Income] except that . . . the return with respect to certain payments of compensation to an employee by his employer shall be made on Forms W-3 and W-2 under the provisions of § 1.6041-2 (relating to return of information as to payments to employees).”

<sup>3</sup> Form W-8 is used to collect and certify information for a foreign person and Form W-9 is used to collect and certify information for a United States citizen or resident alien.



Additionally, the RCPA should validate vendor information prior to submitting 1099s. The IRS offers a free TIN matching service that allows payors, such as Public Administrators, to validate name and TIN combinations.

During Calendar Year 2019, the RCPA, using suspense account funds, paid 23 vendors in amounts that exceeded the \$600 income-reporting threshold.<sup>4</sup> Those vendors received combined payments totaling \$78,479. The RCPA collected W-9s and issued 1099s to 4 of those 23 vendors. However, the RCPA did not collect vendor information for the remaining 19 vendors, specifically through the use of W-8 or W-9 forms or an acceptable substitute, as required, and did not validate vendor information in accordance with IRS guidance. By failing to collect and validate required information from vendors whom it paid income exceeding the \$600 reporting threshold, the RCPA failed to comply with its obligation to collect required information from its vendors.

Since the RCPA did not collect information from the above-mentioned 19 vendors, including their federal tax classification, we could not determine whether and to what extent the RCPA should have issued 1099s to those 19 vendors and ultimately, whether the RCPA complied with its obligation to report income by issuing 1099s.

After we presented our findings to the RCPA, the RCPA informed us that the office now collects W-9s and validates TINs for all vendors.

## **The RCPA Did Not Properly Report a Suspense Account Employee's Income to the IRS**

The RCPA employed a total of six individuals—four paid entirely with City funds, one paid with suspense account funds, and one who was paid with a combination of City funds and RCPA suspense account funds.<sup>5</sup> The City is responsible for reporting to the relevant taxing authorities the wages and other compensation paid to those RCPA employees who were paid with City funds. However, the RCPA is responsible for making such reports to the relevant taxing authorities for those RCPA employees who were paid with RCPA suspense account funds.

During Calendar Year 2019, the RCPA paid two employees a combined amount of \$15,744.46 with suspense account funds. The RCPA correctly reported income for one of those two employees to the IRS using Form W-2 (W-2) and withheld income, Social Security, and Medicare taxes. However, the RCPA incorrectly reported income for the remaining employee by using a 1099 rather than a W-2 and did not withhold income, Social Security, and Medicare taxes.

The RCPA stated that this employee was “hired to replace the office manager.” However, “there was an issue with the line and she was paid separately [with RCPA suspense account funds] until we were able to work out the issue with DCAS and bring her on board as an employee [paid with City funds].” The RCPA paid this employee \$2,128.00 for the period January 22, 2019 to January 30, 2019 using suspense account funds.

IRS guidance states that

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<sup>4</sup> We excluded payments made to government entities because the IRS does not require payors to issue 1099s for those types payments.

<sup>5</sup> During Calendar Year 2019, one individual was paid with both City funds and RCPA suspense account funds. This individual was paid with suspense account funds for the period January 22, 2019 through January 30, 2019, and with City funds for the period February 04, 2019 through December 31, 2019.

Under common-law rules, anyone who performs services for you is your employee **if you can control what will be done and how it will be done**. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. [Emphasis in original.]

Further, IRS guidance states that “[f]acts that provide evidence of the degree of control and independence fall into three categories” which include behavioral control, financial control, and the type of relationship.

Based on the IRS guidance, this individual was an employee since: (1) the RCPA decides when, where, and how this individual should work; (2) the RCPA pays this individual a regular hourly wage; and (3) the RCPA’s relationship with this individual is continuous and not for a specific project or period. The RCPA should have therefore reported this individual’s income as employee income using a W-2 and withheld income, Social Security, and Medicare taxes.

## Recommendations

The RCPA should:

1. Collect W-8s or W-9s from all vendors.

**RCPA Response:** Agree. “We have started the collecting of W-9’s from all vendors and will continue to do so for all new vendors.”

2. Use the IRS TIN matching service to validate vendor name and TIN combinations.

**RCPA Response:** Agree. “We have begun the process of using the IRS TIN matching service to validate vendor name and TIN combinations and will continue this practice moving forward.”

3. Appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s.

**RCPA Response:** Agree. “RCPA accountants have agreed to report vendor payments to the IRS.”

4. Use W-2s to report wages and other compensation to the IRS for employees who are paid with RCPA suspense account funds.

**RCPA Response:** Agree. “W-2s will be utilized to report . . . wages or compensation to the IRS for employees paid through the RCPA suspense account funds.”

5. Withhold federal income, Social Security, and Medicare taxes for employees who are paid with RCPA suspense account funds.

**RCPA Response:** Agree. “Our office will withhold federal income, Social Security, and Medicare taxes for all employees paid through RCPA suspense account funds.”

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Calendar Year 2019.

To obtain an understanding of the policies, procedures, and regulations governing the RCPA, we reviewed: Article 11 of the SCPA, Title 26 - Internal Revenue Code, and the PA Guidelines.

We reviewed the prior New York City Comptroller's Audit Reports on the Financial and Operating Practices of the Richmond County Public Administrator's Office which included audit number MD05-058F issued on June 21, 2005 and audit number FN09-097A issued on December 30, 2009.

To gain an understanding of the RCPA's critical financial and operating practices and assess the RCPA's internal controls, we interviewed RCPA officials regarding (1) the recording, documenting, and reporting of suspense account expenses; (2) the use of W-8s, W-9s, or other means to collect each vendor's name, TIN, and federal tax classification and to obtain certifications from vendors that TINs are correct; (3) validating vendor information; and (4) preparing and issuing 1099s for work performed on behalf of the RCPA. We documented our understanding in memoranda and emails. To gain an understanding of the RCPA's reporting system, QuickBooks, we conducted a walkthrough of the system with RCPA officials. We documented our discussion in memoranda.

To identify all suspense account disbursements made during Calendar Year 2019, we requested and received the transaction detail report from QuickBooks. To test the reliability of the transaction detail report, we requested and received monthly bank reconciliations and bank statements for RCPA's suspense account bank account for Calendar Year 2019. The bank reconciliations contain a general ledger reconciliation, bank statement, an outstanding check register, and cancellation report. For this audit, we tested the bank account from which suspense account disbursements were made.

To determine the accuracy of the transaction detail report, we randomly selected 50 transactions from the transaction detail report and compared payee names, payment amounts, and payment dates reported in the suspense account disbursement journal to bank statements and canceled checks. To ensure the transaction detail report was complete, we randomly selected 50 canceled checks from bank account statements and determined whether those transactions were recorded in the RCPA transaction detail report.

We aggregated payments made to vendors using suspense account funds during Calendar Year 2019 and identified vendors who were paid more than \$600. We excluded payments made to government entities because the IRS does not require payors to issue 1099s for those types of payments. The RCPA paid 23 vendors more than \$600 using suspense account funds.

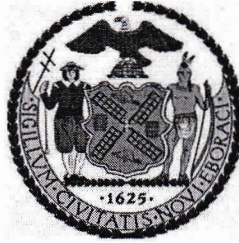
We requested that the RCPA provide us with W-9s for all suspense account vendors who received payments during Calendar Year 2019, and all 1099s and W-2s issued for Calendar Year 2019.

As previously stated, the RCPA did not use W-8s, W-9s, or an acceptable substitute to collect each vendor's name, TIN, and federal tax classification. Since the RCPA did not collect information from vendors including their federal tax classification, we could not identify the total population of vendors who should have been issued 1099s and determine whether the RCPA issued 1099s to vendors as required.

To identify all suspense account employees for Calendar Year 2019, we requested that the RCPA provide us with a list of all suspense account employees. The RCPA provided us with the name of one suspense account employee. We also reviewed the QuickBooks transaction detail report to determine whether the RCPA paid additional employees with suspense account funds. We identified one additional employee. To determine whether the RCPA reported wages and other compensation to the IRS for those employees paid with RCPA commissions, we requested that the RCPA provide us with the suspense employee W-2 for Calendar Year 2019. To determine whether the RCPA appropriately reported wages and other compensation to the IRS, we compared payment amounts in the suspense disbursement journal for the suspense employee to the W-2 issued in Calendar Year 2019.

# PUBLIC ADMINISTRATOR

EDWINA FRANCES MARTIN, ESQ.  
COMMISSIONER  
PUBLIC ADMINISTRATOR



VINCENT ARGENZIANO  
DEPUTY PUBLIC ADMINISTRATOR

## RICHMOND COUNTY

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December 20, 2021

Ms. Marjorie Landa  
Deputy Comptroller for Audit  
Bureau Of Audit  
1 Centre Street, Room 1100  
New York, NY 10007

**Re: Audit Report of the Richmond County Public Administrator's  
Compliance with Financial Reporting Requirements (FK21-066A)**

Dear Ms. Landa:

The Richmond County Public Administrator ("RCPA") would like to thank you for the findings; we have been in touch with our accountant and he agrees with all findings and will correctly handle all filing requirements for 1099s in 2021 and all years going forward:

- The RCPA should collect W-8s or W-9s from all vendors.  
**We have started the collecting of W-9's from all vendors and will continue to do so for all new vendors.**
- The RCPA should use the IRS TIN matching service to validate vendor name and TIN combinations.  
**We have begun the process of using the IRS TIN matching service to validate vendor name and TIN combinations and will continue this practice moving forward.**
- The RCPA should appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s.  
**RCPA accountants have agreed to report vendor payments to the IRS.**
- The RCPA should use W-2s to report wages and other compensation to the IRS for employees who are paid with RCPA suspense account funds.  
**W-2s will be utilized to report and wages or compensation to the IRS for employees paid through the RCPA suspense account funds.**

- The RCPA should withhold federal income, Social Security, and Medicare taxes for employees who are paid with RCPA suspense account funds.

**Our office will withhold federal income, Social Security, and Medicare taxes for all employees paid through RCPA suspense account funds.**

If anything further is needed, please contact Kimberly Potenza at 718-876-7228 or via email at [kpotenza@richmondpa.nyc.gov](mailto:kpotenza@richmondpa.nyc.gov).

Sincerely,



Edwina Frances Martin, Esq.  
Commissioner  
Richmond County Public Administrator