



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

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Deputy Comptroller for Audit

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

FK21-064A

December 28, 2021

<http://comptroller.nyc.gov>



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

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To the Residents of the City of New York:

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

The audit found that the BCPA did not comply with the IRS requirements for collecting and validating vendors' tax information and for reporting income that it disbursed from the suspense account to several employees.

The audit makes five recommendations to the BCPA, including that the BCPA 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, such as car allowances paid under non-accountable plans, to the IRS for employees who are paid with BCPA suspense account funds, and withhold federal income, Social Security, and Medicare taxes for employees who are paid with BCPA suspense account funds.

The results of the audit have been discussed with BCPA officials, and their comments have been considered in preparing this report. The BCPA did not provide written comments in response to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at 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 Bronx County Public Administrator's Compliance with Financial Reporting Requirements

FK21-064A

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 are 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 Bronx County Public Administrator (BCPA) administers such estates in the Bronx. As the estate administrator, the BCPA has a fiduciary duty to the estates that requires the BCPA 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 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 BCPA's estate-administration process.

The BCPA is managed by a Public Administrator and a Deputy Public Administrator who were appointed in August 2017 and February 2018, 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 BCPA reported that it made suspense account disbursements totaling \$263,999 during Calendar Year 2019.

Audit Findings and Conclusion

The BCPA 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 several employees.

Audit Recommendations

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

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

Agency Response

On December 9, 2021, we submitted a draft report to the BCPA with a request to provide written comments by December 22, 2021. However, the BCPA did not provide written comments in response to this report.

AUDIT REPORT

Background

The City has one PA in each of the counties that make up the City, who 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 BCPA administers such estates in the Bronx. As the estate administrator, the BCPA has a fiduciary duty to the estate that requires the BCPA 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 BCPA's estate-administration process.

The BCPA is managed by a Public Administrator and a Deputy Public Administrator who were appointed in August 2017 and February 2018, 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."¹ During Calendar Year 2019, the BCPA reported that it made suspense account disbursements totaling \$263,999, 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 Bronx County Public Administrator (BCPA) 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.

¹ SCPA 1106(3) authorizes Public Administrators to retain "a reasonable amount for the expenses of this 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 BCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to the BCPA and was discussed at an exit conference on November 29, 2021. On December 9, 2021, we submitted a draft report to the BCPA with a request for written comments by December 22, 2021. However, the BCPA did not provide written comments in response to this report.

FINDINGS AND RECOMMENDATIONS

The BCPA 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 several employees. These findings are discussed in the following sections of the report.

The BCPA Did Not Collect and Validate Vendors' Tax Information

The BCPA 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 BCPA must fully comply with all IRS requirements for the submission of Form 1099-MISC (1099) for each person it pays during the year. 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 BCPA 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.² 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.

Additionally, the BCPA 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.

² 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.

During Calendar Year 2019, the BCPA, using suspense account funds, paid 19 vendors in amounts that exceeded the \$600 income-reporting threshold.³ Those vendors received combined payments totaling \$121,487. However, the BCPA did not collect vendor information for those 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 BCPA failed to comply with its obligation to collect required information from its vendors.

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

The BCPA Did Not Properly Report Certain Suspense Account Employees' Income to the IRS

The BCPA employed a total of 14 individuals during Calendar Year 2019—9 individuals who were paid with City funds, 4 individuals who were paid with BCPA suspense account funds, and 1 individual who was paid with a combination of City funds and BCPA suspense account funds.⁴ The City is responsible for reporting to the relevant taxing authorities the wages and other compensation paid to those BCPA employees who were paid with City funds. However, the BCPA is responsible for making such reports to the relevant taxing authorities for those BCPA employees who were paid with BCPA suspense account funds.

During Calendar Year 2019, the BCPA paid five employees a combined amount of \$68,801.73 with suspense account funds. The BCPA correctly reported income for three of those five employees to the IRS using Form W-2 (W-2) and withheld income, Social Security, and Medicare taxes. However, the BCPA incorrectly reported income for the remaining two employees by using 1099s rather than W-2s and did not withhold income, Social Security, and Medicare taxes. Additionally, the BCPA underreported payments made to those two employees by \$4,050.00 collectively.

The BCPA stated the two suspense account employees in question are investigators who “are considered independent contractors and work for the office on a need to show basis. They are not full-time employees and were given the option to have a W-2 or have a 1099 issued to them.”

However, the BCPA’s treatment of the two investigators as independent contractors conflicts with IRS guidance, which states:

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

³ We excluded payments such as: (1) payments made to government entities; (2) payments for office supplies; (3) payments for merchandise, telegrams, telephone, freight, storage, and similar items; and (4) payment for rent because the IRS does not require payors to issue 1099s for those types payments.

⁴ During Calendar Year 2019, one individual was paid with both City funds and BCPA suspense account funds. This individual was paid with suspense account funds for the period January 1, 2019 through February 22, 2019, and with City funds for the period February 25, 2019 through December 31, 2019.

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, the two investigators are employees since: (1) the BCPA decides when, where, and how the investigators should work; (2) the BCPA pays the two investigators a regular hourly wage and reimburses them for expenses; and (3) the BCPA’s relationship with the investigators is continuous and not for a specific project or period. The BCPA should have, therefore, reported the two investigators’ income as employee income using a W-2 and withheld income, Social Security, and Medicare taxes.

With regard to the \$4,050.00 in unreported payments to the two investigators whose income was incorrectly reported with 1099s, the BCPA stated that the “difference is the amount for the car expense. Because the BCPA does not own a city approved vehicle the Investigators use their personal vehicle to conduct investigations throughout the county and are given a daily expense on working days for the use of their car.” The BCPA further stated that it pays investigators \$30 per day for use of their personal vehicle.

26 CFR §1.62-2(c)(4) and (5) state that

Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Railroad Retirement Tax Act (RRTA), Railroad Unemployment Repayment Tax (RURT), and income tax).

Amounts treated as paid under a **nonaccountable plan are included** in the employee's gross income, must be reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax). [Emphasis added.]

Further, CFR §1.62-2(d),(e), and (f) state that to be considered an accountable plan by the IRS, the allowance arrangement must meet all of the following three conditions: (1) the expense must have a business connection; (2) the employee must substantiate the expense by submitting the amount, time, use, and business purpose of the expense to the payor; and (3) the employee must return any excess allowance within a reasonable period of time.

The BCPA’s allowance arrangement did not meet the IRS requirements for it to be considered an accountable plan because the BCPA did not require its two investigators to account for vehicle expenses and return excess payments. Consequently, the BCPA should have reported payments made to the two investigators for use of their personal vehicles to the IRS and the New York State Department of Taxation. A prior audit report issued in 2015 cited the BCPA for not reporting car allowances made under a non-accountable plan and recommended that the BCPA appropriately report all wages to the IRS and State tax authorities. However, the BCPA continues to not report car allowances paid under a non-accountable plan to tax authorities.

Additionally, the BCPA did not report suspense account payments totaling \$2,335 it made to two City employees (Community Associates whose regular salaries are paid with City funds). The

BCPA paid those additional sums to the two City employees for attending auctions and as severance pay and did not report those payments or withhold income, Social Security, and Medicare taxes from them.

After we presented our findings to the BCPA, the BCPA stated that it will review IRS guidance for reporting employee income.

Recommendations

The BCPA should:

1. Collect W-8s or W-9s from all vendors.
2. Use the IRS TIN matching service to validate vendor name and TIN combinations.
3. Appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s.
4. Use W-2s to report wages and other compensation, such as car allowances paid under non-accountable plans, to the IRS for employees who are paid with BCPA suspense account funds.
5. Withhold federal income tax, Social Security, and Medicare taxes for employees who are paid with BCPA suspense account funds.

BCPA Response: As previously stated, on December 9, 2021, we submitted a draft report to the BCPA with a request to provide written comments by December 22, 2021. However, the BCPA did not provide written comments in response to this report.

Auditor Comment: Since the BCPA did not provide a written response to the draft report, we reiterate recommendations #1 through #5 as stated above.

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 BCPA, we reviewed: the Bronx County Public Administrator Taxation policy and procedure, Article 11 of the – SCP §1109, Title 26 - Internal Revenue Code, Guidelines for the Operations of the Office of the Public Administrators of New York State.

We reviewed prior New York City Comptroller’s Audit Reports on the Financial and Operating Practices of the Office of the Bronx County Public Administrator which included audit number MD99-098A issued on June 23, 1999, audit number MD04-062F issued on June 24, 2004, audit number MH07-128A issued on May 29, 2009, and audit number FK13-127A issued on June 30, 2015.

To gain an understanding of the BCPA’s critical financial and operating practices and assess the BCPA’s internal controls, we interviewed BCPA 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 BCPA. We documented our understanding in memoranda and emails. To gain an understanding of BCPA’s reporting system, Computrust, we reviewed the Computrust manual, and we conducted a walkthrough of the system with BCPA officials. We documented our discussion in memoranda.

To identify all disbursements made during Calendar Year 2019, we requested and received the suspense disbursement journal from Computrust. To test the reliability of the disbursement journal, we requested and received monthly bank statements and reconciliations for BCPA’s suspense account bank account for Calendar Year 2019. The bank reconciliations contain a general ledger reconciliation, bank statement, trial balance report generated from Computrust, an outstanding check register, and cancellation report.

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

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 and payments for office supplies and rent because the IRS does not require

payors to issue 1099s for those types of payments. The BCPA paid 23 vendors more than \$600 using suspense account funds.

As previously stated, the BCPA did not use W-8s, W-9s, or an acceptable substitute to collect each vendor's name, TIN, and federal tax classification. Since the BCPA 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 BCPA issued 1099s to vendors as required.

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