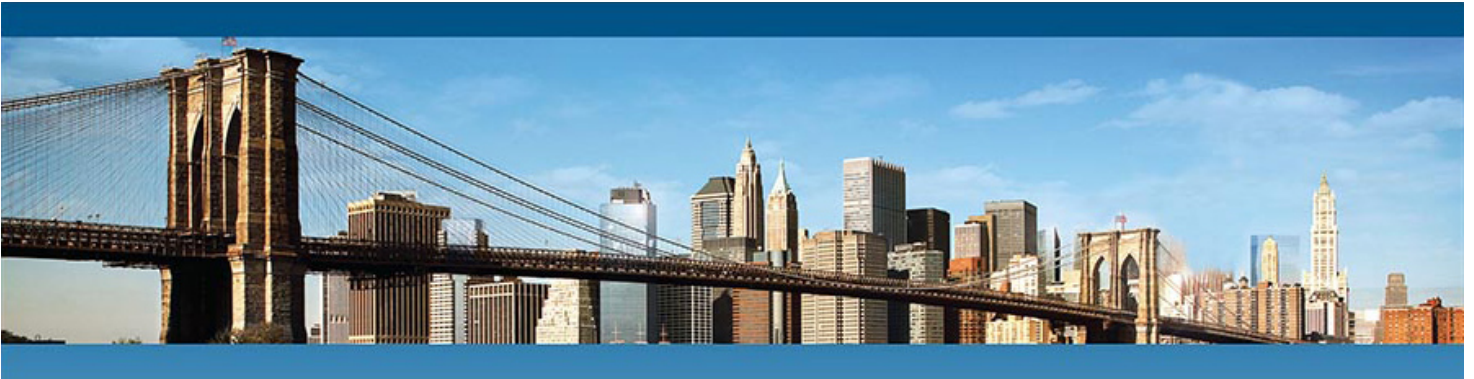




City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

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

FK21-067A

December 30, 2021

<http://comptroller.nyc.gov>



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

December 30, 2021

To the Residents of the City of New York:

My office has audited the Office of the Queens County Public Administrator (QCPA) to determine whether the QCPA 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 QCPA to increase accountability and to ensure that they comply with applicable laws and guidelines.

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

The audit makes six recommendations to the QCPA, including that the QCPA 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, re-issue W-2s to those employees whose income was either overstated or understated, use W-2s to report wages and other compensation to the IRS for employees who are paid with QCPA funds, and withhold federal income, Social Security, and Medicare taxes for employees who are paid with QCPA funds.

The results of the audit have been discussed with QCPA officials, and their comments have been considered in preparing this report. The QCPA'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.

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 Queens County Public Administrator's Compliance with Financial Reporting Requirements

FK21-067A

EXECUTIVE SUMMARY

New York City (the City) has one Public Administrator (PA) in each of the five 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 Queens County Public Administrator (QCPA) administers such estates in Queens. As the estate administrator, the QCPA has a fiduciary duty to the estates that requires the QCPA 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 QCPA's estate-administration process.

The QCPA is managed by a Public Administrator who was appointed in February 2002 and a Deputy Public Administrator who was appointed in January 1996. 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 QCPA reported that it made suspense account disbursements totaling \$767,714 during Calendar Year 2019.

Audit Findings and Conclusion

The QCPA did not consistently comply with Internal Revenue Service (IRS) requirements for collecting and validating vendors' tax information and IRS requirements for reporting income that it disbursed to several employees.

Audit Recommendations

Based on our findings, we made the following six recommendations to the QCPA:

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

Agency Response

In its response, the QCPA objected to the report's findings regarding its compliance with IRS requirements for collecting and validating vendors' tax information and reporting employees' income to the IRS. The QCPA stated that it complies or will comply with five of the six audit recommendations. The QCPA disagreed with the audit recommendation to reissue W-2s to employees whose income was either overstated or understated, stating that "[n]o employee income was overstated, and the understated amounts were de minimis and will not be reissued." However, as detailed in the report, the QCPA did not comply with IRS requirements for collecting and validating vendors' tax information and reporting employees' income to the IRS.

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 estates. The QCPA administers such estates in Queens. As the estate administrator, the QCPA has a fiduciary duty to the estate that requires the QCPA 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 QCPA's estate-administration process.

The QCPA is managed by a Public Administrator and a Deputy Public Administrator who were appointed in February 2002 and January 1996, 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 QCPA reported that it made suspense account disbursements totaling \$767,714, which included, among other things, payments made to vendors for providing goods and services to the PA's office and payments made to employees.

Objective

The objective of this audit was to determine whether the QCPA 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 QCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to the QCPA and was discussed at an exit conference on December 6, 2021. On December 13, 2021, we submitted a draft report to the QCPA with a request for written comments. We received a written response from the QCPA on December 26, 2021.

In its response, the QCPA objected to the report's findings regarding its compliance with IRS requirements for collecting and validating vendors' tax information and reporting employees' income to the IRS. The QCPA stated that it complies or will comply with five of the six audit recommendations. The QCPA disagreed with the audit recommendation to reissue W-2s to employees whose income was either overstated or understated, stating that "[n]o employee income was overstated, and the understated amounts were de minimis and will not be reissued."

Specifically, the QCPA "objected to the statement that '[t]he QCPA did not consistently collect and validate vendors' tax information.'" The QCPA asserted that "this is an unfair and inaccurate characterization. Additionally the subject matter of this summary 'headline' was occasioned by a change in the scope of the audit after the preliminary report was issued and an exit conference held" and that "[t]he original scope of the Audit covered expenditures from estate funds." Further, the QCPA stated that "at the conclusion of the exit review, there was no systemic action by the QCPA that needed to be corrected. On the contrary we established compliance at all times with our reporting duties and our office committed to continue to strive to work 'error free' despite the budgetary constraints placed upon our agency."

However, as detailed in this report, the QCPA did not collect vendor information for 12 of 17 sampled 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. Additionally, contrary to the QCPA's assertion, the audit scope always included a review of payments made to vendors using QCPA suspense account funds. However, the audit scope initially included a review of payments made to vendors using both QCPA suspense account funds and estate funds. As was explained to the QCPA, due to conflicting guidance from the IRS regarding a Public Administrator's obligation to report payments made on behalf of estates using estate funds, we subsequently narrowed the scope of our review to include only payments made to vendors using QCPA suspense account funds.

Additionally, the QCPA stated that "we also object to the statement that '[t]he QCPA did not properly report employee's income to the IRS'" and that the finding should state that the "QCPA has accurately reported Employee income to the IRS; However, has made certain errors." Further, the QCPA stated that the errors that it made were de minimis.

However, as detailed in the report, the QCPA did not report or did not appropriately report payments it made to six PA employees ranging from \$75 to \$600. Furthermore, the underreported payments generally did not meet the IRS' safe harbor provision for de minimis errors. The IRS General Instructions for Forms W-2 and W-3 (2019) state that

If you fail to file a correct Form W-2 by the due date and cannot show reasonable cause, you may be subject to a penalty as provided under section 6721. The penalty applies if you . . .

- Fail to file timely, . . .

- Include incorrect information on Form W-2.

The IRS General Instructions for Forms W-2 and W-3 (2019) provide some exceptions for the failure to file correct information returns penalty which include, among other things, a safe harbor provision for certain de minimis errors. Per the IRS instructions, “[t]he safe harbor generally applies if no single amount in error differs from the correct amount by more than \$100 and no single amount reported for tax withheld differs from the correct amount by more than \$25.”

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

FINDINGS AND RECOMMENDATIONS

The QCPA did not consistently comply with IRS requirements for collecting and validating vendors' tax information and IRS requirements for reporting income that it disbursed to several employees. These findings are discussed in the following sections of the report.

The QCPA Did Not Consistently Collect and Validate Vendors' Tax Information

The QCPA uses suspense account funds to pay office expenses, which include, among other things, payments to vendors for providing goods and services to the PA's office. In accordance with its management and oversight responsibilities, the QCPA 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.² 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 QCPA 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.³ 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.

² 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).”

³ 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 QCPA 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 QCPA, using suspense account funds, made payments to 47 vendors in amounts that exceeded the \$600 income-reporting threshold which may be reportable.⁴ Those vendors received combined payments totaling \$507,121. With regard to payments made to vendors with suspense account funds, the QCPA paid 17 vendors more than \$5,000. Based on our review of the QCPA's records, we found that the QCPA collected vendor tax information and issued 1099s, as required, to 5 of those 17 vendors. However, the QCPA did not collect vendor information for the remaining 12 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 QCPA in 12 out of 17 instances failed to comply with its obligation to collect required information from its vendors.

We note that the QCPA did not issue 1099s to any of the above-mentioned 12 vendors. Since the QCPA did not collect information from vendors, including their federal tax classification, we could not determine whether and to what extent the QCPA should have issued 1099s to those 12 vendors and ultimately, whether the QCPA complied with its obligation to report income by issuing 1099s.

After we presented our findings to the QCPA, the QCPA stated that the cited vendors are corporations and that the QCPA is not required to collect W-9s from corporations and issue 1099s to them. Further, the QCPA stated that the office has used those vendors for many years and, at the time the office engaged vendors, it used the New York State Department of State Corporation and Business Entity Database to verify vendors' entity status i.e., that they were corporations and therefore, were not subject to 1099 reporting requirements. Additionally, the QCPA stated that certain "vendors are paid by the PA because the estates had no money. When the estates have funds they reimburse the PA. so eventually the estates are paying. . . . these are not PA office expenses."

However, as previously stated, the QCPA should use W-9s to collect each vendor's name, TIN, and federal tax classification. Specifically, the IRS Instructions for the Requester of Form W-9 state that requestors should "[u]se Form W-9 to request the taxpayer identification number (TIN) of a U.S. person" and that "[f]or federal tax purposes, a U.S. person includes but is not limited to . . . A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States." The New York State Department of State Corporation and Business Entity Database does not serve as an acceptable substitute because it does not provide entities' federal tax classification particularly with respect to limited liability companies, entities that may elect to be treated as either a corporation or partnership for federal tax classification purposes.

With regard to QCPA's assertion that certain payments were estate expenses, we note that certain vendors among the 12 at issue provided services, such as insurance and computer support, on behalf of the QCPA office. Furthermore, while other vendors may have provided services on behalf of estates, the QCPA engaged those vendors, exercised management and oversight

⁴ We excluded certain payments such as: (1) payments made to government agencies and tax-exempt organizations; (2) payments for merchandise, telegrams, telephone, freight, storage, and similar items; and (3) payments made with a credit card because the IRS does not require payors to issue 1099s for those types of payments.

responsibilities in relation to those engagements, and paid them using QCPA suspense account funds and therefore, the IRS may deem the QCPA to be the payor.

Additionally, with regard to TIN validation, the QCPA stated that “[i]n the past the IRS has notified this office when there was a discrepancy with the information filed. At that time we investigate the discrepancy and amend the form.” Further, the QCPA stated that the office received only a very limited number of IRS notices that 1099s were filed with incorrect TINs. The QCPA stated that the office recently tried using the IRS TIN matching service but that it was difficult to use and did not work. Since the QCPA was notified of only a very limited number of mistakes and had difficulty using the IRS TIN matching service, the QCPA stated that it will not use this service going forward.

However, IRS guidance states that payors who include incorrect information on returns may be subject to penalties. Therefore, the QCPA should seek help from the IRS on how to use the TIN matching service to validate vendor information prior to issuing 1099s.

The QCPA Did Not Properly Report Employees’ Income to the IRS in Some Circumstances

The QCPA employed a total of 17 individuals—8 paid regular, recurring wages with City funds, and 9 paid with suspense account funds. The City is responsible for reporting to the relevant taxing authorities the wages and other compensation paid to the eight QCPA employees who were paid with City funds. However, the QCPA is responsible for making such reports to the relevant taxing authorities for those QCPA employees whose work was controlled by the QCPA, whether paid for by suspense account funds or estate funds.

During Calendar Year 2019, the QCPA paid nine employees a combined amount of \$279,491. The QCPA correctly reported income for eight of those nine employees to the IRS. However, based on our review of QCPA records, it appears that the QCPA incorrectly reported income for the remaining employee. Specifically, the QCPA underreported income for one suspense account employee by \$75.

Additionally, the QCPA did not report or did not appropriately report payments it made to five PA employees for services that they performed that were not covered by their regular City-funded salaries, such as attending real estate open houses. Specifically, as to four of those five employees, the QCPA did not report such payments totaling \$900 and did not withhold income, Social Security, and Medicare taxes. Further, as to the fifth PA employee, the QCPA incorrectly reported payments totaling \$600 for the employee using a 1099 and did not withhold income, Social Security, and Medicare taxes. The QCPA stated that “[e]mployees who attend our open houses . . . are treated as vendors and receive 1099’s if the amount earned is \$600.00 or more as per IRS guidelines.”

However, IRS guidance states that

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, the five individuals were employees because (1) the QCPA decides when, where, and how they should work and (2) the QCPA’s relationship with them is continuous and not for a specific project or period. The QCPA should have, therefore, reported the five individuals’ income as employee income using a W-2 and withheld income, Social Security, and Medicare taxes.

After we presented our findings to the QCPA, the QCPA stated that it did not pay City employees for services such as attending real estate open houses during Calendar Years 2020 and 2021 and therefore, for those two years, which immediately followed our audit scope period, the QCPA was not required to report any income for City employees or and withhold income, Social Security, and Medicare taxes.

Recommendations

The QCPA should:

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

QCPA Response: “QCPA does collect W-9’s for all Attorneys, Real Estate Brokers, Appraisers, whether or not they are corporations.”

Auditor Comment: The QCPA should collect W-8s or W-9s from all vendors regardless of the types of services they provide or their federal tax classification. As previously stated, the IRS Instructions for the Requester of Form W-9 state that requestors should “[u]se Form W-9 to request the taxpayer identification number (TIN) of a U.S. person” and that “[f]or federal tax purposes, a U.S. person includes but is not limited to . . . A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.”

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

QCPA Response: “When this recommendation appeared in the preliminary report, we attempted to utilize this TIN matching system. We were unable to match a vendor for which we had the confirmation letter from the IRS. We then attempted to unsuccessfully call the IRS number to resolve this issue. This recommendation may not be practical. However, we will attempt to comply and will record our attempts to utilize this service.”

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

QCPA Response: “We appropriately report based on federal tax classification. We disagree that we are required to report every payment to every corporation per IRS guidance. The instructions for the 1099-Misc state the following: Some payments do not have to be reported on form 1099-misc, although they may be taxable to the recipient. Payments for which a Form 1099-Misc is not required include the following:

Generally payments to a corporation (including a limited liability company (LLC) that is treated as a C or S Corporation. However, see reportable payments to corporations.

The following payments to corporations generally must be reported on Form 1099-MISC:

- a. Medical and Health Care Payments
- b. Gross proceeds paid to an attorney
- c. Substitute payments in lieu of dividends or tax exempt interest.

The QCPA has appropriately reported vendor payment based on the tax classification of the vendor.”

Auditor Comment: Contrary to the QCPA’s assertion, the report does not state that the QCPA is “required to report every payment to every corporation per IRS guidance.” Rather, the report recommends that the QCPA appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8s and W-9s.

As detailed in the report, the QCPA did not consistently collect information from vendors, including their federal tax classification, through the use of W-8 or W-9 forms or an acceptable substitute, as required. Consequently, we could not determine whether and to what extent the QCPA should have issued 1099s to vendors and ultimately, whether the QCPA complied with its obligation to report income by issuing 1099s.

4. Re-issue W-2s to those employees whose income was either overstated or understated.

QCPA Response: “No employee income was overstated, and the understated amounts were de minimis and will not be reissued.”

Auditor Comment: We reiterate that the QCPA should re-issue W-2s to those employees whose income was understated.

5. Use W-2s to report wages and other compensation to the IRS for employees who are paid with QCPA funds.

QCPA Response: “The QCPA does us[e] W-2s to report wages and other compensation to the IRS for the employees who are paid with QCPA funds.”

Auditor Comment: As previously stated, the QCPA did not report or did not appropriately report payments it made to five PA employees for services that they performed that were not covered by their regular City-funded salaries. Specifically, as to four of those five employees, the QCPA did not report such payments totaling \$900 and did not withhold income, Social Security, and Medicare taxes. Further, as to the fifth PA employee, the QCPA incorrectly reported payments totaling \$600 for the employee using a 1099 and did not withhold income, Social Security, and Medicare taxes. Therefore, we reiterate that the QCPA should use W-2s to report wages and other compensation to the IRS for employees who are paid with QCPA funds.

6. Withhold federal income, Social Security, and Medicare taxes for employees who are paid with QCPA funds.

QCPA Response: “These two issues revolve around paying our employees additional funds for attending and monitoring the open houses. This audit was for the year 2019. Since 2019 due to Covid there have been no open houses. We thank the auditors for bringing this issue to our attention. Going forward, when open houses resume the QCPA we will issue W-2’s to all employees who are retained for the purpose of conducting the open houses and assure that all appropriate taxes will be withheld.”

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 QCPA, we reviewed: Article 11 of the SCPA §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 Queens County Public Administrator's Office which included audit number MD03-094A issued on May 12, 2003, audit number MD06-057F issued on April 24, 2006, and audit number FN12-075A issued on June 18, 2012.

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

To identify all disbursements made during Calendar Year 2019, we requested and received the suspense account disbursement journal from Quicken. To test the reliability of the disbursement journal, we requested and received monthly bank statements and reconciliations for QCPA's suspense account bank account for Calendar Year 2019. The bank reconciliations contain a reconciliation summary, uncleared transaction detail report, bank statements, monthly transactions report, and check images.

To determine the accuracy of the disbursement journals, 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 QCPA's 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 certain payments such as: (1) payments made to government agencies and tax-exempt organizations; (2) payments for merchandise, telegrams, telephone, freight, storage, and similar items; and (3) payments made with a credit card because the IRS does not require payors to issue 1099s for those types of

payments. The QCPA made payments to 47 vendors in amounts that exceeded the \$600 income-reporting threshold which may be reportable. We requested that the QCPA provide us with W-9s for all vendors who received payments during Calendar Year 2019, and all 1099s and W-2s issued for Calendar Year 2019.

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

To identify all suspense account employees for Calendar Year 2019, we requested that the QCPA provide us with a list of all suspense account employees. The QCPA provided us with a list of 9 suspense account employees. We also reviewed the Quicken suspense account journal to determine whether the QCPA paid additional employees with suspense account funds. We identified five individuals who were paid regular, recurring wages with City funds and non-recurring wages with suspense account funds. To determine whether the QCPA reported wages and other compensation to the IRS for those employees paid with QCPA commissions, we requested that the QCPA provide us with suspense account employee W-2s for Calendar Year 2019. To determine whether the QCPA appropriately reported wages and other compensation to the IRS, we compared payment amounts in the suspense account disbursement journal for each suspense account employee to W-2s issued in Calendar Year 2019.



Queens County Office of the Public Administrator

Lois M. Rosenblatt, Esq.
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Counsel

December 26, 2021

City of New York
Office of the Comptroller
Bureau of Audit
1 Centre Street, Room 1100
New York, NY 10007

Attention: Marjorie Landa
Deputy Comptroller for Audit

RE: Draft Audit Report on the Queens County Public Administrator's Compliance
with Financial Reporting Requirements
Audit Number: FP17-137AL

Dear Ms. Landa:

I am in receipt of your Draft Letter Report dated December 13, 2021 summarizing compliance with Financial Reporting Requirements by the Queens County Public Administrator.

Upon review of the report, we object to the statement that "The QCPA did not consistently collect and validate vendors' tax information."

This is an unfair and inaccurate characterization. Additionally the subject matter of this summary "headline" was occasioned by a change in the scope of the audit after the preliminary report was issued and an exit conference held.

The original scope of the Audit covered expenditures from estate funds. The comptroller audited the estates in Queens County over a period of 15 months. The office of the Public Administrator spent over 100 hours reviewing and responding to inquiries from the Audit. This audit revealed that of the 157 vendors reviewed there were 5 errors. This number was de minimis, constituted an error ratio of 3%, and was attributed to human error rather than a systemic failure of the QCPA to "Consistently collect and validate vendors tax information."

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Furthermore, the errors found totaled \$46,176.00. The total payments to the 157 Vendors were \$6,749,002. This represents an error ratio of less than 1/10th of 1%. In any event, these issues were eliminated from the scope of the Audit at the exit conference after numerous hours were spent reviewing these issues with the Office of the Comptroller.

In summary, at the conclusion of the exit review, there was no systemic action by the QCPA that needed to be corrected. On the contrary we established compliance at all times with our reporting duties and our office committed to continue to strive to work "error free" despite the budgetary constraints placed upon our agency.

We also object to the statement that "The QCPA did not properly report employee's income to the IRS".

It should state that the "QCPA has accurately reported Employee income to the IRS; However, has made certain errors". Income was underreported for one suspense employee by \$75.00. Again this is de minimis. The office declines to correct a 2019 error that may cause difficulty for the employee.

The report also indicates that the QCPA treated employees as vendors for open houses and failed to report combined income of \$900.00. This is accurate. However, it should be understood that these employees are not actually paid by employer funds; but funds advanced by the QCPA and reimbursed by the estates. In some instances the estate paid the employee to volunteer to supervise the open house for the auction; it is an estate obligation and the estate could operate under the "outside vendor" requirements. In practice, sometimes the employee received funds from the suspense account rather than the estates. Eventually, each of these expenses was reimbursed and paid by the estate and not the QCPA.

Admittedly, an error was made in uniformly applying this rule. Going forward the QCPA will issue W2 information whenever an employee is paid by the suspense account when performing these duties in order to rectify this issue. Yet again, this reporting error totaled \$975.00 against the payroll of \$279,491.00 for an error rate of less than 1/2 of 1%; which is a de minimis amount and which cannot accurately be classified as a systemic failure.

In response to your recommendations contained therein, please be advised of the following

Recommendation #1: The QCPA should collect W-8's or W-9's from all vendors.

QCPA does collect W-9's for all Attorneys, Real Estate Brokers, Appraisers, whether or not they are corporations.

Recommendation #2: QCPA should use the IRS TIN matching service to validate vendor name and TIN recommendations.

When this recommendation appeared in the preliminary report, we attempted to utilize this TIN matching system. We were unable to match a vendor for which we had the confirmation letter from the IRS. We then attempted to unsuccessfully call the IRS number to resolve this issue. This recommendation may not be practical. However, we will attempt to comply and will record our attempts to utilize this service.

Recommendation #3: QCPA should appropriately report vendor payments to the IRS based on federal tax classification as reported by vendors on W-8 and W-9s.

We appropriately report based on federal tax classification. We disagree that we are required to report every payment to every corporation per IRS guidance. The instructions for the 1099-Misc state the following: Some payments do not have to be reported on form 1099-misc, although they may be taxable to the recipient. Payments for which a Form 1099-Misc is not required include the following:

Generally payments to a corporation (including a limited liability company (LLC) that is treated as a C or S Corporation. However, see reportable payments to corporations.

The following payments to corporations generally must be reported on Form 1099-MISC:

- a. Medical and Health Care Payments
- b. Gross proceeds paid to an attorney
- c. Substitute payments in lieu of dividends or tax exempt interest.

The QCPA has appropriately reported vendor payments based on the tax classification of the vendor.

Recommendation #4: Reissue W-2's to those employees whose income was either overstated or understated.

No employee income was overstated, and the understated amounts were de minimis and will not be reissued.

Recommendation #5: Use W-2s to report wages and other compensation to the IRS for employees who are paid with QCPA Funds. The QCPA does use W-2s to report wages and other compensation to the IRS for the employees who are paid with QCPA funds.

Recommendation #6: Withhold federal income, Social Security and Medicare taxes for employees who are paid with QCPA funds.

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These two issues revolve around paying our employees additional funds for attending and monitoring the open houses. This audit was for the year 2019. Since 2019 due to Covid there have been no open houses. We thank the auditors for bringing this issue to our attention. Going forward, when open houses resume the QCPA we will issue W-2's to all employees who are retained for the purpose of conducting the open houses and assure that all appropriate taxes will be withheld.

In conclusion, I would like to take this opportunity to thank your staff for their professionalism in conducting this audit; and for permitting us this opportunity to respond and to freely exchange information that will help the office run more efficiently, effectively and in compliance with all appropriate statutes and regulations.

Very truly yours,



LOIS M. ROSENBLATT
Public Administrator
Queens County