



**2015**

**Handbook of Two Percent  
Tax Laws and Guidelines for  
Chartered Benevolent Associations**



## SECTION I

### General Information

For the past several years the firematic community has witnessed an increased interest in foreign fire insurance. In addition, since the enactment of Chapter 537 of the Laws of 1975, creating Section 33(a) of the General Municipal Law, the State Comptroller has had the authority to examine the records of entities receiving foreign fire insurance monies, including benevolent associations, fire companies, and the fire department of cities, fire districts and villages.

Foreign fire insurance monies represent a tax on the premium paid on insurance policies as provided for in Section 2118, 9104 and 9105 of the Insurance Law. Each of these sections of law entitles fire companies or fire departments protecting an eligible area to receive an appropriate share of the tax collected on insurance policies written by foreign or alien insurers on policies within their area of protection.

Section 9104 of the Insurance Law imposes a tax on all foreign and alien fire insurance corporations, associations or individuals other than mutual insurance companies who insure property against loss or damage by fire. These monies are paid by the insurers to either the New York State Insurance Department or the Insurance Services Office of New York, commonly known as ISO, at the option of the insurer.

Distributions are made annually on March 1st, to local areas.

Section 9105 of the Insurance Law imposes a tax on premiums paid on policies issued by foreign or alien mutual fire insurance companies licensed pursuant to Insurance Law, Section 4108. In contrast to Section 9104, taxes imposed by Section 9105 must be paid and distributed by the New York State Insurance Department.

Insurance Law, Section 2118 requires excess line brokers to pay the New York State Insurance Department a percentage of gross premiums charged those insured by foreign or alien insurance companies for insurance procured by such brokers pursuant to their licenses. These monies are also paid to the New York State Insurance Department and distributed in the same manner as under Section 9105.

In many cases foreign fire insurance premium taxes are distributed pursuant to a special act of the State Legislature. Distributions of this nature are prevalent in areas with fire benevolent associations. All firemen's benevolent associations, which are direct payees of foreign fire insurance proceeds must have been designated as such by a special act of the legislature.

A special legislative act creating a firemen's benevolent association usually provides for the following: incorporation procedures, persons eligible for membership, purposes of the corporation including powers and duties, organization and by-laws, control of and disposal of funds and properties, and last but not least, receipt of foreign fire insurance monies.

The newly incorporated firemen's benevolent association must submit the following information to the Insurance Department before a direct disbursement of foreign fire insurance taxes can be made:

A statement indicating the fact that an organizational meeting was held, including a copy of the minutes. Usually this statement is signed by the secretary and verified by the president of the benevolent association.

A copy or section of the corporate by-laws which authorize a particular officer to receive foreign fire insurance money. The name and address of the officer designated to receive foreign fire insurance money, and a statement agreeing to the fact that the benevolent association will notify the Insurance Department of any change in this office.

Firemen's benevolent associations are the only entities other than a municipality, fire district or fire department which are designated by the New York State Insurance Department as direct payees.

Some of the uses of the monies: Firemen's benevolent associations are limited to those purposes set forth in their special legislative act; except for the fact that the comptroller's office has been of the position that any expenses directly connected with administering the money would also be a proper allowable expense. Many city charters mention firemen's benevolent associations and foreign fire insurance. Some charters include provisions requiring disposition of foreign fire insurance money to a particular association

or associations. Since March of 1977, our State Auditors have been performing foreign fire insurance examinations.

They want to be sure that all foreign fire insurance tax proceeds have been received and distributed correctly.

In addition, examiners review expenditures and determine if they were made in accordance with law resulting in rendering an opinion on the reasonableness of the annual report of fire insurance funds.

All entities receiving and disbursing foreign fire insurance funds must file an annual report each year with the State Comptroller pursuant to the General Municipal Law. Since only monies after January 1st, 1976, are subject to audit, your 1976 reports showed a zero beginning balance. However, in all subsequent years your reports for those years should contain balances carried over from the previous year.

If you received \$100 or less in foreign fire insurance money for any particular year, you do not have to file a report.

The annual report is the starting point for examination in that the examiners will verify; the accuracy of its content. So there should be a clear relationship between the items stipulated on the report and the various records supporting it.

The Comptroller's office recommends that a separate checking account be set up for the administration of foreign fire insurance money. When the examiners come into your association the only thing that they will be interested in is your records regarding foreign fire insurance, so a separate checking account would enable other association business to remain private.

The clerk or secretary of the association should retain minutes in regard to policies, by-laws, rules or regulations established for the use of foreign fire insurance money.

The chief fiscal officer, which is usually the treasurer, should have a record of receipts and disbursements, bank statements, cancelled checks, claims, a copy of the annual report and other relevant information.

The receipts of foreign fire insurance money should be entered in a cash receipts journal and contain the date when it was received, its source, such as the fire district treasurer, town supervisor, or the Insurance Department, etc. and the amount that was received.

Cash disbursements records should be kept detailing expenditures of foreign fire insurance monies indicating the check number, payee, date of the check and the amount. In addition, the cash disbursements journal should indicate the purpose of the expenditure.

#### Points in Regard to the Supporting Documentation

In a few audits it was found that there was a problem with insufficient documentation.

The thing to remember is the fact that if there is some kind of evidence to support each payment, staple it to the check, together they will evidence the reported expenditures.

Each expenditure of foreign fire insurance monies should be supported by some type of documentation that would enable an auditor to satisfy himself that the money was spent for the indicated purpose.

The examiners from The Bureau of Audit and Control will also inquire into whether or not you were receiving foreign fire insurance from all of the sources you are entitled to receive it from. In order to do this, the examiners will have to know all of the areas which you protect, which would mean all fire protection contracts and agreements, et cetera.

As a result of this audit, the governing board will receive a transmittal letter from the Department of Audit and Control indicating the fact that the particular firemen's benevolent association was examined. In addition, it will indicate any areas of noncompliance.

In several instances disbursing agents were not bonded. Bonding is a good idea in that it protects the association in case of inappropriate acts involving foreign fire insurance.

The major purposes for which foreign fire insurance money was spent by firemen's benevolent associations may be categorized as follows: Funeral expenses, welfare expenses, medical, legal, sick and death benefits. This seems to be logical since the special legislative acts of most firemen's

benevolent associations provide that foreign fire insurance money must be spent for the care and relief of disabled or indigent volunteer firefighters and their families.

Each expenditure of foreign fire insurance monies should be supported by some type of documentation that would enable an auditor to satisfy himself that the money was spent for the indicated purpose.

The Comptroller's office took a statistical sample of the annual reports that were submitted for the year 1976. The purpose of this sample is to give the firematic community a summary of what types of expenditures were made.

All interest earned on foreign fire insurance money should be included as a receipt in the report to the Comptroller on 2% funds.

A few firemen's benevolent associations filed their annual reports on a year associated with the fiscal year of the firemen's benevolent association. All of these annual records should be filed on a calendar year, January 1st to December 31<sup>st</sup>.

## SECTION II

### Typical Questions and Answers

- Q-1 Question: We have one check book with two columns; one for the two percent, and the other for fund-raising activities. Are we correct in doing it that way, or should we have two individual check books?
- Answer: A check register with a separate column for foreign fire insurance disbursements would be acceptable.
- Q-2 Question: What restrictions are placed on foreign fire insurance monies received by a firemen's benevolent association?
- Answer: Firemen's benevolent associations hold a fiduciary responsibility for investing trust monies. The law is very liberal in regard to allowable investments of trust moneys. Benevolent associations can invest foreign fire insurance monies in many things from stocks and bonds to certificates of deposit.
- Q-3 Question: Must foreign fire insurance money be expended?
- Answer: There is no stipulation in the law that places a time constraint on the expenditure of foreign fire insurance money.
- Q-4 Question: Can money from our two percent fund be used to pay for expenses for delegates at conventions?
- Answer: Yes, but only for the representation of a particular designated individual to attend a convention in which such convention would contain workshops on the subject of foreign fire insurance.
- Q-5 Question: Can a paid fire company receive this 2% money?
- Answer: The court has determined that paid as well as volunteer firefighters are entitled to 2% money.
- Q-6 Question: Should the 2% tax be kept separate or in the regular Association Fund?
- Answer: It is always best that it be kept in a separate account.
- Q-7 Question: Can the 2% tax funds be used to pay salaries of the treasurer or financial secretary?
- Answer: No, but an appropriate payment may be made as to only administration of two percent funds.
- Q-8 Question: Can an exempt benevolent firemen's association invest in mutual fund shares with 2% money?
- Answer: Yes.
- Q-9 Question: Is there a maximum limit set by law with respect to death benefits?
- Answer: "Death benefits" is assumed to mean funeral, burial, last illness expenses. There is no maximum limit set by law for such death benefits. These amounts should be fixed in each case after investigation by a committee of the trustees.
- Q-10 Question: Can 2% tax funds be used by a benevolent association for anything other than benevolent benefits?
- Answer: No, the charter of benevolent organizations tells explicitly what the 2% tax money can be used for and each charter must be followed explicitly. Expenses are proper for administration of two percent funds.
- Q-11 Question: Is it possible to give aid to a firefighter without actual bills?
- Answer: Every request for aid should be investigated by a committee of trustees. If they are satisfied that the money is spent then they can recommend to the Board of Trustees that an amount be paid, without actual bills.

Q-12 Question: Can an exempt association regulate its membership by requiring each member to attend one meeting a year?

Answer: This provision could be put in the by-laws, provided the member would be given an opportunity to state why he should be excused, and would not be deprived of his membership without such opportunity. However, the association purpose is benevolence regardless of attendance.

Q-13 Question: Is there a pamphlet available explaining how to start a benevolent association?

Answer: You may obtain a booklet from the financial secretary of FASNY containing copies of all resolutions of the fire company, fire department, local government, and proposed act for the Legislature and suggested by-laws.

Q-14 Question: Are the so-called home owners policies exempt from the 2% tax?

Answer: All home owner policies written by foreign insurance companies are not exempt from the 2% tax.

Q-15 Question: May a death benefit over \$500 be paid?

Answer: A death benefit of any amount may be paid if the investigating committee of the trustees of a benevolent association determine that it should be because of some need on the part of the recipients. In no instances, however, should a fixed benefit be set up to be paid to everyone in the organization at their death.

Q-16 Question: Can a person holding an exempt certificate apply for membership in a benevolent association although he/she was dishonorably discharged from his/her fire department after obtaining his/her exemption certificate?

Answer: The benevolent charter generally states that a person dropped from his/her fire company cannot be a member, even though he/she has an exempt certificate.

Q-17 Question: Can probationary firefighters be denied membership in an exempt benevolent association?

Answer: No. A firefighter elected to membership and serving a probationary period is nevertheless a member of the fire department and eligible for membership in the benevolent association. If he/she ceases to be a firefighter before serving 5 years, his/her membership also ceases in the benevolent association.

Q-18 Question: Who, officially, is supposed to get the 2% tax: (1) fire department (2) the exempts (3) the commissioners (4) paid personnel?

Answer: Under the Insurance Law, the 2% tax is to be paid to the treasurer of the fire department rendering the protection unless, by a special act of the legislature, the money is paid to a benevolent association.

Q-19 Question: Does the interest of invested 2% tax monies become part of the 2% tax monies?

Answer: The interest on invested 2% tax monies does become a part of the 2% tax monies.

Q-20 Question: In the case of a department in a fire district made up of a number of individual companies, would it be possible for one of the companies to form an Exempt Benevolent, not connected with the other companies, within the department?

Answer: It would not be possible for one fire company in a department to form an exempt and benevolent association. In order to form a benevolent association by an act of the legislature, the permission of all fire companies must first be obtained before a bill will be introduced in the legislature by either an assemblyman or senator.

Q-21 Question: What action can be taken to make the insurance companies allocate the money where there are five or six districts within a town?

Answer: When there are several fire districts, they should each furnish the Insurance Department with streets by zip code.

- Q-22 Question: Can a member who has served his/her time in another department belong to a benevolent association not associated with the department where he/she has served firematic time?
- Answer: This is regulated by the charter of the benevolent association and also its by-laws. Generally speaking, he/she cannot.
- Q-23 Question: When a member of the benevolent association after serving five years to ten years moves out of the district, is he/she entitled to all benefits?
- Answer: Yes, he/she is entitled to all benefits providing he/she continues to be a member.
- Q-24 Question: If a member of a benevolent association is receiving welfare is he/she entitled to benefits from the benevolent association?
- Answer: Yes, because he/she is indigent, but if known by the welfare authorities, there may be a reduction made in his/her welfare benefits.
- Q-25 Question: Isn't it more advantageous to form a benevolent association?
- Answer: Usually, but not always (depends on local conditions). A benevolent association should be formed to preserve the 2% money for benevolent purposes and to hope to insure continued payments to the volunteers in the event that the district should adopt a policy of employing paid firefighters.
- Q-26 Question: If an exempt benevolent association owns property, may it rent the same to other organizations?
- Answer: Yes, but the property would then lose its exempt status on the tax rolls.
- Q-27 Question: When a member of an exempt organization passes away, can the family receive financial aid?
- Answer: Yes, if the charter of the organization permits payments to the volunteer firefighter's family, and if they have some need.
- Q-28 Question: Do stocks and bonds have to be listed on the recognized stock exchanges in order to be considered investments for benevolent associations?
- Answer: The trustees of a benevolent association have a fiduciary responsibility and are investing trust funds and it would not be prudent to invest these trust monies in any funds that were not listed on the exchanges.
- Q-29 Question: Can benevolent associations invest in farm mortgages insured both by the Department of Agriculture and Department of Treasury?
- Answer: Yes, they may invest in first mortgages.
- Q-30 Question: Does each benevolent case have to be kept confidential by the Board of Trustees?
- Answer: All investigations should be placed in a confidential file. Only total amounts expended for all cases during a given period should be reported by the Trustees.
- Q-31 Question: Can all volunteer firefighters of a company or department or just 5-year exempt members be included in the benevolent association?
- Answer: All volunteer firefighters can be members, not just 5-year members. There is a provision in the Association Charter for dropping members who leave the fire department before serving 5 years.
- Q-32 Question: Can the benevolent association have a bank handle investments for them? If so, do we lose control?
- Answer: Yes, the association can contract with a bank or trust company to handle its investments. Control may be obtained, if considered desirable, to approve proposed investments.
- Q-33 Question: May a benevolent association pay the bills of a woman in a nursing home, who owns her own home but has no money?

Answer: Yes, the funds are to be used for families of volunteer firefighters as well as the firefighter. She is indigent and may be aided because she has no income or funds to live on.

Q-34 Question: Can funds from the 2% be given to pay for a member's wife's funeral expenses?

Answer: Yes, in all cases where financial situation of the member warrants it, after investigation.

Q-35 Question: Can interest received on investments be used for refreshments by a benevolent association?

Answer: No, unless it's on non-2% funds.

Q-36 Question: When there is a separate exempt association in a group of fire companies, is the association eligible for 2% tax monies?

Answer: An exempt association is never entitled to the 2% tax money unless there is an act of the legislature providing for the payment of this 2% tax to the exempt association.

Q-37 Question: Can a benevolent association use the 2% tax money for death benefits only?

Answer: A benevolent association is formed for the benefit of indigent and disabled volunteers and their families. If the association wanted to provide in their by-laws that they would only provide a death benefit to families of deceased volunteer firefighters, they may do so, but it would not be properly using the funds for the benefits intended.

Q-38 Question: If a benevolent association dissolves, where would the money that is in the treasury go to?

Answer: A plan of dissolution must be submitted to the court for approval, including how the funds are to be disbursed. They must be used for a similar type purpose.

Q-39 Question: May a benevolent association purchase a life insurance policy for each member and pay the premium on same?

Answer: It is not proper, with 2% funds, for a benevolent association to purchase and insurance policy for each member and pay the premiums on the same.

Q-40 Question: Is a person an automatic member of the benevolent association if he/she has served his/her active time and is now exempt?

Answer: A person does not automatically become a member of a benevolent association simply because he/she has served five years. A benevolent association is a separate corporation and application for membership must be made as in any other membership corporation.

Q-41 Question: How do you determine how much may be paid for death benefits? That is, how much money must you have in benevolent funds to cover a membership of 200 members?

Answer: The amount paid for a death benefit should be decided upon after an investigation committee makes its investigation and report to the trustees. The amount of the death benefit will vary according to the needs of the widow or family of the deceased firefighter. The trustees of the benevolent association must also take into consideration the amount of money the association has available in its account at the moment and for the foreseeable future which it can use for benefits. Unnecessary accumulation is unreasonable.

Q-42 Question: May the benevolent association give aid to a disabled or injured volunteer firefighter who is not a member of the association? Must it do so?

Answer: The charters of benevolent associations specify that 2% tax funds are to be used to aid indigent and disabled volunteer firefighters and their families. Thus, the association is a "trustee" of the fund for this purpose. Consequently, the association may aid persons who qualify for aid but do not belong to the association. The Attorney General has ruled that non-members are entitled to look to these "trust funds" for aid. This does not mean they receive it automatically. The same investigation and requirements should be applied as for members.

Q-43 Question: Can a benevolent association buy refreshments for a department and also can it give dividends such as a party?

Answer: Only out of non-2% tax funds.

Q-44 Question: If it is true that a non-member can qualify for aid from the association, why should anyone pay dues to belong to the association?

Answer: The purposes of an association, in its charter in addition to benevolence, include fraternity and promotion of the fire service in the area. It could have a club atmosphere.

Q-45 Question: Can you make amendments to the by-laws in later years to pay the salaries of the Treasurer or Financial Secretary if no provision was made in the original charter?

Answer: Yes, if it would not be contrary to the charter.

Q-46 Question: If membership is not automatic and you still cannot deny membership to an active volunteer firefighter, what is the use of voting on applications?

Answer: It is not said that membership cannot be denied an active firefighter. What is said is that he/she is eligible. Any person who is eligible by a corporation's charter and by-laws should be admitted, but membership can be denied for reason, but not arbitrarily.

Q-47 Question: We have a limitation in our by-laws: within 5 years after a volunteer leaves, he/she has an option to join the exempt organization. After 5 years, he/she is ineligible, are we right?

Answer: If contested in court and if there were no other reason for denying membership, the by-law provision would probably be invalid.

#### Answers to Other Frequently Asked Questions

A benevolent association may obtain a list of permissible investments from any bank.

The best reference to use in managing a benevolent association is the charter granted by the State of New York to the associations.

2% tax funds may be used to set up a group life insurance plan for members of a benevolent association.

Any volunteer firefighter who is qualified to belong to a benevolent association can make his/her application at any time.

A benevolent association may be dissolved under the Not-for Profit Corporations Law and the court must approve how the assets will be disposed.

No officials of local government have any authority over benevolent corporations.

If a volunteer company is supplanted by a paid department, the 2% money shall generally continue to be paid to the treasurer of the benevolent association in the area under the act of the legislature creating the association, unless a court finds otherwise.

## SECTION III

### Guidelines for Management of 2%

#### Funds for Benevolent Associations

##### Benevolent Associations Do:

- read and understand your state charter.
- remember the trustees or officers are usually designated as responsible for the distribution of the 2% monies and may be personally held accountable for the use made of the funds.
- have the option of investing funds in sound paper (i.e., CD's, savings, banks, bonds, etc.).
- pay by check with a bill attached from payee and not to the individual who requested help (if possible).
- consider that all volunteer firefighters (see your charter) may be entitled to assistance. The request must be approved by those who have the financial responsibility for the distribution of funds.
- maintain an accurate ledger of all 2% monies received and expended since January 1, 1976.
- have the option of using some 2% funds for administrative expenses (rent, Convention expenses, auditing and secretarial).
- use the monies for legal fees.
- use the monies for stationary, envelopes, etc.
- remember that when in doubt, obtain advice from your local 2% committee representative or the State Attorney.
- consider the humanity factors and remember the needy are usually more sensitive than others. Your inquiries should be confidential between the investigating officers and the aided person.
- remember that assistance to a needy (indigent) person does not stop upon his/her demise. His/her family and spouse are eligible for assistance.
- remember that the state charter of a benevolent association assures families of needy or disabled firefighters some financial assistance whereas the absence of a benevolent charter permits the uses of these funds for other purposes.
- prepare the annual audit report and file by February 28th with the New York State Office of Audit and Control.
- remember that help to out-of-town members is proper.
- use your 2% monies for gifts to the Firemen's Home Endowment Fund.
- maintain minutes of Board of Trustees to show record of policy guidelines to include all authorization for payment thereby assuring adherence to statutes governing expenditures.
- have the option to purchase group life insurance for all active volunteer and inactive exempt volunteer firefighters without regard to membership in the exempt and benevolent association, provided that the participating firefighters are required to designate family members as beneficiaries.

##### Benevolent Associations Do Not:

- listen to here say — do make your investigation complete, impartial, factual and private.
- establish death benefits as a matter of formula. Review each case on its own merit. Fixed benefits should not be established.
- use 2% monies for other uses than covered in your charter.
- use 2% monies on radios, jackets, TV's and items which are the financial responsibility of the local governing body.
- lend money. The payment to the needy is not a loan.
- sponsor athletics or other community activities (Boy Scouts, Girl Scouts, Little League, children's parties).

- maintain a single account for all of your benevolent funds. A separate account will minimize bookkeeping on the 2% funds received subsequent to January 1, 1976.
- write off your 2% monies received prior to January 1, 1976. Keep in mind that it took some good heads to build these accounts and they should not be wasted. Keep in mind that these funds are 2% monies, and the limitations in your charter on their use have not changed.
- establish by-laws which contradict your state charter.
- contribute to other fire department benevolent associations.
- compensate fire company officers for their services.
- provide refreshments at meetings from 2% funds.

#### A Synopsis of Exempt and Benevolent Association Administration Matters

In conducting the affairs of an exempt and benevolent association which was created by act of legislature, and in administrating its funds and disbursing its benevolence, there are certain limitations which must be observed and certain pitfalls which must be avoided. In the past several years, at forums and talks at State Conventions, in articles printed in the Volunteer Fireman, and upon other occasions when the opportunity arose, you have been provided information on what the benevolent purposes of such an association were, what might be done with your funds, who might be helped and to what extent and in what manner. What follows concentrate on what NOT to do, how NOT to administer your funds, where NOT to get into trouble.

The first thing is that you can NOT do anything which is contradictory to your charter. The word "charter" is just another name for the act of the legislature creating the association. It is recommended that you take a good look at your charter once again.

You may NOT overcome a provision of your charter which you may dislike by making a contrary provision in your by-laws. The association may of course, make by-laws, but may not provide in them anything which is contrary to your charter or to State law. If you do, then that by-law provision is illegal and without effect.

In one section the charter says "The control and disposal of the funds and property of (the) corporation, the exercise of its powers, and the management and control of its affairs shall be vested in and exercised by a board of trustees.. . ". This is quite clear. It means that necessary decisions on benevolent expenditures from time to time are NOT made by a membership meeting, but by a trustees meeting.

The investment of funds of an association are NOT limited to deposits in bank accounts. You are authorized by law to invest "in such mortgages, bonds, debentures, shares of preferred and common stock and other shares as its directors shall deem advisable". As to the specific form of suitable investment, the Superintendent of Banks of the State each year prepares a list of securities in which savings banks may invest. The list is not binding upon you but can be helpful. In addition, there are the so-called "Legal Investments" for trustees and fiduciaries which also, while not binding upon you, are helpful. These include government and municipal securities, public utility and corporate bonds, first mortgages and the preferred or common stocks listed on a recognized exchange.

In another place your charter says that the purposes of this organization are the maintenance of suitable headquarters, promotion of friendly intercourse among members and of the welfare of the volunteer fire service in the area, and the welfare, aid and assistance of members and their families who are disabled or indigent. However, still another section of the charter says that the foreign fire insurance tax received by the corporation "shall only be used for the care and relief of disabled or indigent volunteer firemen and their families". Consequently, you must make a distinction in using your funds. The foreign fire insurance tax funds may ONLY be used for rendering aid and assistance. They may NOT be used for the other authorized purposes of the association. This is because these funds derive from a tax and are limited by the State Constitution as to their use. All other funds of the association may be used for any purpose of the association, including aid and relief.

it is because of this distinction in the use of foreign fire insurance tax funds and of other association funds that we have repeatedly suggested maintaining separate bank accounts and separate columns in your ledger sheets for foreign fire insurance tax funds received and expended and for other association funds

received and expended so that there will not be a question of mistakenly misapplying foreign fire insurance tax funds. Do NOT co-mingle them in one account with other association funds.

To make clear the distinction between the funds, and the limitations on foreign fire insurance tax funds, here are some examples:

- You may pay a death or funeral benefit out of foreign fire insurance tax funds.
- You may use foreign fire insurance tax funds to pay the premium for a group life insurance policy covering all members and active firemen who are not members.
- You should not commit the association to pay all members a death or funeral benefit in an amount greater than \$500.00. This is because the State Insurance Department contends that if you do you become an insurance company and must secure a license under the Insurance Law. While we do not accept this contention, yet in order to avoid any problem, we have repeatedly suggested that you do not carry a provision in your by-laws fixing a uniform death or funeral benefit for all members, but rather that you provide that a benefit such as the trustees shall determine in each case after investigation shall be paid. You could then, in a case where it was needed, pay much more than the \$500.00
- You should NOT commit the association to pay all members a disability benefit of more than \$350.00 in any one year. The Insurance Department says you must be licensed if you do so. The key word is again "commit". Do NOT put specific figures in your by-laws, but provide for a determination by the trustees in each case after investigation. You could then pay any amount above \$350.00 without coming against the Insurance Law.
- Your charter further says foreign fire insurance tax funds may be used for the care and relief of members and their families who are disabled or indigent. Just what do these words mean? Care and relief include just about anything a person needs. This does NOT mean that you may only put money into his hands. You may provide medical, dental or hospital care, pay rent or mortgage payments, provide food and clothing and even make monthly payments to keep him off the relief rolls. The word "disabled" means physically or mentally impaired so as to be unable to pursue an occupation. This does NOT mean that you have to be crippled for life. It does NOT mean the disability has to be in the performance of fire duty. It does NOT mean the disability has to be the result of an accident. Therefore any disability, for any period of time, whether a week or a year or more, and from any cause, whether accident or illness, and however occurring, whether at work or play, is one for which foreign fire insurance tax funds can be used. There is no limit imposed on the amount of such funds you may expend in behalf of such person. Observe also that you are NOT limited to disability of a member only but that it extends as well to his family. Here is a real opportunity to do good work with your foreign fire insurance tax funds.
- In the case of disability of a volunteer fireman, you need NOT apply the yardstick of his being well fixed financially or not. Your charter says foreign fire insurance tax funds may be used to aid indigent or disabled volunteer firemen or their families. You can provide assistance then in cases of disability to all members and their families regardless of financial condition.
- You should NOT think of the association as a lending institution. If someone is in need, then the funds of the association may be used to aid him in his time of need. But this is not to say that any member should be able to feel free to come to the association for a loan in the normal sense of the word and involving a promise to repay. The problems which you might get into can be visualized if it became a practice to lend money to members on application and a promise to repay. The funds should be given or used for the benefit of the members and not loaned.

While the specific examples given above are by no means exhaustive, they do furnish guidelines to indicate some things to avoid and how your affairs can be conducted without conflict with your charter or the law.

Further information for the Incorporation of a Benevolent Association may be found in the booklet sold by FASNY. It contains: Model Act of Legislative Creating Benevolent Associations;

Preliminary Resolutions of Fire Departments and Municipalities; Résumés of Procedural Steps to form Associations and Recording Forms.

Should you have further need for assistance, your Two Percent Tax Committee will be ready to assist you

as you consider necessary.

## SECTION IV

### Opinions

OPN NO. 80-796

INSURANCE LAW, 553, 554: An exempt volunteer firemen's benevolent association created by special act of the State Legislature and authorized to receive foreign fire insurance tax moneys may expend such moneys only for the purposes authorized by the special act while a fire department, fire district or municipal treasurer receiving such moneys may expend them for any purpose which the members of the fire department and the department, district or municipal treasurer, as the case might be, determine to be for the use and benefit of the department.

Mr. Anthony Macaluso  
Secretary/Treasurer  
Board of Fire Commissioners  
East Moriches Fire District  
East Moriches, New York 11940

Re: East Moriches Fire District (Town of Brookhaven) Dear Mr. Macaluso:

This is in reply to your letter in which you asked for clarification with respect to the manner in which expenditures of foreign fire insurance tax monies by exempt volunteer firemen's benevolent associations differ from expenditures of such monies by fire departments which do not have benevolent associations.

The foreign fire insurance taxes are those monies distributed on behalf of foreign and alien insurance companies pursuant to the provisions of section 553 and 554 of the Insurance Law. Section 553 provides that the treasurer of the fire department, or if no such officer exists, the treasurer of the municipality or such other persons as may be designated in any special law, shall receive from every foreign and alien fire insurance corporation (except mutual fire insurance companies), a certain percentage of the premium for fire insurance written upon property within the boundaries of the particular municipality "for the use and benefit of the fire department" or fire companies of the municipality.

Section 554 provides that every foreign mutual fire insurance company shall pay to the Superintendent of Insurance a certain percentage of the premiums for fire insurance written upon property within a particular municipality and that the Superintendent of Insurance shall then remit 10 percent thereof to the Firemen's Association of the State of New York and the balance thereof to the treasurer of the fire department or fire district or to the respective treasurers of exempt firemen's benevolent associations created by special acts of the State Legislature.

In light of the emphasized portions in the preceding paragraphs, many exempt firemen's benevolent associations have been created by special acts of the State Legislature. Where such associations have been created, the respective treasurers thereof are authorized to receive direct payment of the foreign fire insurance tax monies. In almost every case, these special acts also prescribe the manner in which tax monies may be utilized (e.g. Chapter 140 of the Laws of 1964 incorporated the East Moriches Volunteer Firemen's Benevolent Association, and provides for the expenditure of foreign fire insurance tax monies by such association for the care and relief of disabled or indigent volunteer and exempt volunteer firemen and their families.). Where special acts exist and prescribe the manner in which foreign fire insurance tax monies are to be expended, the tax monies must be expended in the manner prescribed by such special acts.

In the absence of a special act creating an exempt firemen's benevolent association and authorizing such association to receive foreign fire insurance tax monies, sections 553 and 554 provide for the payment of such monies to either the treasurer of the fire department or, if no such officer exists, the treasurer of the municipality, to be used for the use and benefit of the fire department and the company or companies comprising the same. This Department has construed this provision to mean that foreign fire insurance tax monies may be expended for any purposes which the members of the fire department and the fire department or municipal or fire district treasurer, as the case may be, determine to be for the use and benefit of the department (Opns St Comp, 1979, No 79-627). Of course, such monies may not be expended for any purpose which is illegal or contrary to public policy.

We trust that the above will be of assistance to you.

December 18, 1980  
Sincerely,  
EDWARD V. REGAN  
State Comptroller  
by  
Theodore M. Berns  
Chief Municipal Consultant

INSURANCE LAW, §~ 553, 554: In a fire department consisting of both paid and volunteer firemen, the paid firemen are entitled to receive an equitable share of foreign fire insurance tax monies.

FOREIGN FIRE INSURANCE TAXES: Use by exempt volunteer firemen's benevolent associations (establishment of guidelines).

INSURANCE LAW, §~ 553, 554; Laws of 1941, Chapter 194: The Volunteer and Exempt Firemen's Benevolent Association of Garden City Park may not use foreign fire insurance premium monies to purchase a "universal gym" for use by Association members. It is advisable for the Association to adopt guidelines clarifying the meaning of the provisions in the act incorporating the Association relating to the use of such monies.

We have received an inquiry asking whether the Volunteer and Exempt Firemen's Benevolent Association of Garden City Park may use monies from the taxes on foreign fire insurance premiums to purchase a "universal gym" to be used by the members of the Association, and whether written rules and regulations for the use of such monies should be adopted by the Association.

Where an exempt firemen's benevolent association has been created by special act of the State Legislature and is authorized to receive direct payment of the foreign fire insurance tax monies, the monies must be expended only in the manner prescribed by the special act (see e.g. Opns St Comp, 1981, No. 81-63; Opns St Comp, 1981, No. 81-29). The Volunteer and Exempt Firemen's Benevolent Association of Garden City Park was incorporated by chapter 194 of the Laws of 1941 (contained in sections 634.0 et seq. of the Nassau County Civil Divisions Act). We are aware of no amendments to that chapter. The last section of chapter 194 relates to payment and expenditure of foreign fire insurance tax monies and provides, in pertinent part, as follows:

*"Such taxes shall only be used for the care and relief of disabled or indigent volunteer and exempt firemen and their families."*

*Since the proposed purchase apparently would not be solely for the care and relief of disabled or indigent volunteer and exempt firemen and their families, use of foreign fire insurance premium monies for such purchase would not be in compliance with the special act and would constitute an improper use of such monies.*

*In prior opinions, we have indicated that the determination of the intended meaning of the provisions governing the use of foreign fire insurance premium monies as set forth in a special act creating a benevolent association should be left to the association in the first instance. In this regard, we have suggested that it might be advisable for associations to develop by-laws or rules and regulations setting forth reasonable uniform standards or guidelines as to what constitutes "indigency" or "disability" for the purposes of determining eligibility to receive these monies. In addition, the guidelines might contain definitions of the terms "care and relief" and "families". Of course, such standards should reflect the original intent of the drafters of the special act and would, normally, bear a close relationship to the commonly understood meaning of the terms in question (Opn No. 81-29, supra; Opns St Comp, 1980, No. 80-86, as yet unreported).*

September 29, 1981  
Mr. James Roth, Secretary  
Volunteer and Exempt Firemen's Benevolent Association of Garden City Park

INSURANCE LAW, §- 9104, 9105; Laws of 1975, Chapter 543: The Montgomery Fire Department Volunteer Exempt Firemen's Benevolent Association may expend foreign fire insurance tax monies to rent a room in which to meet, if the meetings are for the purpose of providing care and relief to disabled or indigent volunteer firemen and their families.

You ask whether the Montgomery Fire Department Volunteer Exempt Firemen's Benevolent Association may expend foreign fire insurance tax monies to rent a room to be used for meetings of the Association and its trustees. Some of these meetings will be devoted to discussing the care and relief of disabled or indigent volunteer firemen and their families.

Sections 9104 and 9105 of the Insurance Law, as amended by chapter 293 of the Laws of 1988, govern the use of foreign fire insurance tax monies "except as otherwise provided in any special law". Sections 9104 and 9105 provide that the foreign fire insurance tax monies of a fire department consisting of a single company must be used for the benefit of the department, as determined by the members of the department. Sections 9104 and 9105 also provide that the foreign fire insurance tax monies of a multi-company fire department must be turned over to the companies comprising the department and used for the benefit of each company, as determined by the members of the company. A company in a multi-company fire department may also pay all or a portion of the tax to the department of which it is part.

As previously noted, however, sections 9104 and 9105 of the Insurance Law apply only "except as otherwise provided in any special law". Therefore, where an exempt firemen's benevolent association has been created by special act of the State Legislature and is authorized to receive direct payment of the foreign fire insurance tax monies, the monies may only be expended in the manner prescribed by the special act (1983 Opns St Comp No. 83-120, p 151; Opns St Comp No. 81-328, p 357).

The Montgomery Fire Department Volunteer Firemen's Benevolent Association was incorporated by chapter 543 of the Laws of 1975. Section 3 of that legislation sets forth the several purposes of the Association and provides as follows:

*The purposes of such corporation shall be the maintenance of suitable headquarters for, and the promotion of fraternal intercourse among the members of such corporation, the relief, aid and assistance of such members and their families who are disabled or indigent, and the promotion of the welfare of the volunteer fire service within the village of Montgomery and the territory provided with fire protection by contract with the town of Montgomery.*

*In furtherance of these purposes, section 5 of that act provides that the Association shall have all of the powers of a non-profit corporation, which include the power to rent real property and all powers necessary to effect any or all of the purposes for which the corporation is formed(not-For-Profit Corporation Law § 202 [a] [4], [16]).*

*Section 7 chapter 543, however, specifically governs the receipt and expenditure of foreign fire insurance tax monies. This section authorizes the Association to receive these monies and provides, in part, as follows:*

*Such taxes shall only be used for the care and relief of disabled or indigent volunteer firemen and their families.*

*Thus, although the Association has the power to rent a meeting room in furtherance of its general corporate purposes, the expenditure of foreign fire insurance tax monies by the Association is limited by section 7 of the act to the care and relief of disabled or indigent volunteer firemen and their families. We believe, however, that the care and relief of disabled or indigent volunteer firemen and their families by the Association necessarily requires at least occasional meetings of the Association or its trustees for this purpose. Therefore, in our opinion, foreign fire insurance tax monies may be expended to rent a meeting room if the purpose of the meeting is the care and relief of disabled or indigent volunteer firemen and their families.*

*Finally, we recommend adoption of by-laws or rules and regulations setting forth reasonable standards or guidelines for the expenditure of foreign fire insurance tax monies (see Opn No. 81-328, supra). Such standards should reflect the original intent of the special act and bear a close relationship to the commonly understood meaning of the language used in that act.*

April 4, 1989  
Earle B. Monroe,  
Recording Secretary  
Montgomery Fire Department

OPN NO. 90-20

FOREIGN FIRE INSURANCE TAXES: Particular Uses (donation to firemen's association) - Recipients (transfer of custody of monies) - Treasurer's Powers (transfer of custody of monies)

INSURANCE LAW, §~ 9104, 9105: A village treasurer may not transfer custody of foreign fire insurance tax monies to a firemen's association unless authorized or required by a special law, but the treasurer may pay such monies to the association if the membership of the village fire department determines that the expenditure is for the use and benefit of the department. 1982 Opns. St Comp No. 82-239, p 300 is superseded.

You ask whether a village treasurer, at the request of members of the village fire department, may transfer custody of foreign fire insurance tax monies to an unincorporated firemen's association. The firemen's association was not created by a special act of the State Legislature which authorizes the association to receive directly foreign fire insurance tax monies.

Sections 9104 and 9105 of the Insurance Law, as amended by chapter 293 of the Laws of 1988, govern the distribution and use of foreign fire insurance tax monies unless a special law enacted by the State Legislature provides otherwise. In general, these sections of the Insurance Law provide that foreign fire insurance tax monies must be paid to the treasurer or other fiscal officer of the fire department, or if the fire department does not have a treasurer or other fiscal officer, to the fiscal officer of the authority having jurisdiction and control of the fire department (Insurance Law, §~9104 [a] [1]-[3]; 9105 [d] [2] [B]-[D]). In a multi-company fire department, the initial recipient of the foreign fire insurance tax monies is required in turn to distribute the amount received to the fire companies constituting the fire department (Insurance Law, §~9104 [a] [4j]; 9105 [D] [2], [E]; see also 1989 Opns St Comp No. 89-53, p 120). Each fire department or company receiving foreign fire insurance tax monies generally must use them for the benefit of the department or company, as determined by the members of the department or company, although a fire company in a multi company fire department is not precluded from paying all or a part of the tax monies to the fire department of which it is part (Insurance Law, §~9104 [f] [1]; 9105 [d] [3] [A]). There is no authority in sections 9104 and 9105, however, for a village treasurer who is the initial recipient of foreign fire insurance tax monies to transfer custody of the monies to a firemen's benevolent association.

Sections 9104 and 9105 each further provides that "[the provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation". These provisions clearly preempt the adoption by a village of a local law providing for payment or distribution of foreign fire insurance monies in a manner inconsistent with sections 9104 and 9105 (see 1990 Opns St Comp No. 90-8, p 17). Thus, a village may not, by local law, authorize the transfer of custody of foreign fire insurance tax monies to a firemen's benevolent association. Since, however, sections 9104 and 9105 apply except as provided by "special law", a volunteer firemen's benevolent association may be authorized by special act of the State Legislature to receive and expend such monies for purposes specified in the special act (see, e.g., L 1989, Clarion Hotel 256; see also 1989 Opns St Comp No. 89-11, p 23).

Based on the foregoing, we believe that where foreign fire insurance tax monies are paid to a village treasurer pursuant to Insurance Law, §~9104 and 9105, these statutory provisions require the treasurer to retain custody of the monies for the use and benefit of the fire department or, in the case of a multi-company fire department, to distribute the monies to the companies comprising the department. Since these provisions may not be superseded by local law, a village treasurer may not transfer custody of foreign fire insurance tax monies to a firemen's benevolent association unless required or authorized by a special law.

Although there is no authority in Insurance Law, §~9104 and 9105 for the transfer of custody of foreign fire insurance tax monies to a firemen's association, these sections, as noted, require foreign fire insurance tax monies to be expended for the use and benefit of the fire department or company receiving

the same, as determined by the members thereof. In this regard, we have previously concluded that foreign fire insurance tax monies may be expended for any purpose which the membership determines to be for the use and benefit of the department or company, other than an illegal purpose contrary to public policy (see 1989 Opns St Comp No. 89-16, p 34).

We are not aware of the precise purposes for which the unincorporated firemen's association in question was established. It may be possible, however, for a recipient department or company to determine that a donation of its share of foreign fire insurance tax monies to a firemen's association would be for the use and benefit of the donor department or company. Therefore, in our opinion, if the membership of the fire department or company reasonably determines that a donation of foreign fire insurance tax monies to a firemen's association is for the use and benefit of the department or company, the person having custody of those monies may pay the amount specified to the firemen's association.

1982 Opns St Comp No. 82-239, p 300, is hereby superseded to the extent that it is inconsistent with this conclusion.

June 8, 1990  
Francis L. Real, Mayor  
Village of Green Island

## SECTION V

### Insurance Law

#### SECTION 9104: Fire insurance premium tax on foreign and alien insurers.

- (A) Except in the cities of New York and Buffalo, there shall be paid by every foreign and alien fire insurance corporation, association or individuals which insure property against loss or damage by fire, except foreign mutual fire insurance companies, on or before the first day of March the sum of one dollar and eighty cents upon the hundred dollars, and at that rate, upon the amount of all premiums which during the year, or part of a year, ending on the last preceding thirty-first day of December, shall have been received by any such insurer for any insurance against loss or damage by fire written by it upon property situated within each city, village, fire district, or fire alarm district, or fire protection district to:
- (1) the treasurer or other fiscal officer of the fire department affording fire protection in such city, village, fire district, fire alarm district, or fire protection district, or
  - (2) if any such fire department does not have a treasurer or other fiscal officer then to the fiscal officer of the authorities having jurisdiction and control of such fire department, or
  - (3) to such other person or entity as shall be designated in any special law to receive the premium tax, and
  - (4) if such payment is made to the treasurer or other fiscal officer of a fire department or fiscal officer of authorities having jurisdiction and control of such fire department, such treasurer or fiscal officer shall on or before the fifteenth day of March in each year distribute the amount so received to the fire department is constituted of more than one fire company.
- (B) There shall also be paid to the treasurer of the Firemen's Association of the State of New York, on or before the first day of March in each year, by each such insurer, for the support and maintenance of the firemen's home at Hudson, New York, the sum of twenty cents upon the hundred dollars, and at that rate, upon the amount of all premiums upon which a fire insurance premium tax is payable as aforesaid.
- (C) Each insurer required to pay a tax pursuant to this section shall, at the time of paying such tax, file with the person to whom the tax is required to be paid a report, subscribed and affirmed by the person making it as true under the penalties of perjury setting forth the aggregate amount of premiums upon which the tax is payable.
- (D) Corporations, associations or individuals required to pay a fire insurance premium tax by this section may elect to pay such tax to the superintendent, which shall be distributed by him as prescribed in this section, except that such distribution shall be made with the distribution required by section nine thousand one hundred five of this article after adding any earnings and deducting the expenses as specified in such section.
- (E) Every agent for any such insurer writing a policy of fire insurance upon property in this state shall report to the insurer the name of the city, village, fire district or fire alarm district or fire protection district in which the property insured is situated, and, if the property insured is situated in territory not protected by any fire department or fire company, that fact shall be reported.
- (F) Except as otherwise provided in any special law and except as to the Firemen's Association of the State of New York, such tax shall be used for the benefit of, as determined by the members thereof:
- (1) the fire company receiving the same, but this shall not preclude the payment by a fire company of all or a part of such tax so received to the fire department of which it is a part, or
  - (2) the fire department when such tax is not required under paragraph four of subsection (a) of this section to be distributed to fire companies.
- (G) The provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation.
- (H) Those provisions of subsections (a) and (e) of this section which require the determination of the city, village, fire district, fire alarm district or fire protection district within which an insured property is

located shall not apply to policies which insure motor vehicles, provided that:

- (1) the insurer allocates the tax to be paid on fire premiums received from such policies by city, village, fire district, fire alarm districts or fire protection district using a percentage of allocation which is based upon the amounts of tax to be paid on all other fire premiums; and
- (2) the insurer has received the approval of the superintendent to use this percentage of allocation.

SECTION 9105: Fire insurance premium tax; foreign mutual fire insurance companies.

- (A) (1) Every mutual fire insurance company or association authorized to do business in this state pursuant to section four thousand one hundred eight of this chapter shall pay to the superintendent on or before the fifteenth day of February of each year a tax of two per centum on all gross premiums collected or received by it or them for direct insurance against loss or injury upon property situated within this state during the preceding year ending the thirty-first day of December.
- (2) The tax shall be determined after deducting from such gross premiums, premiums upon policies not taken; premiums returned on canceled policies; and any dividends or refunds or returns paid to policyholders or applied in part payment of any renewal premium during such year.
- (B) (1) Every such mutual fire insurance company or association whose business is confined chiefly to the insurance of sprinklered risks and which is conducted solely for the benefit and protection of its members and which pays no commissions or brokerages for the acquirement of its business, in lieu of all other taxes on premiums, shall pay to the superintendent on or before the fifteenth day of February of each year a tax at the rate of two per centum on all gross premiums upon policies on risks located in this state in force on the thirty-first day of December next preceding.
- (2) The tax shall be determined after deducting from such gross premiums the dividends and returns and the unused or unabsorbed portion of such gross premiums computed at the average rate of such dividends and returns and the unused or unabsorbed portion of such gross premiums actually paid to policyholders or applied in part payment of any renewal premiums on its annual policy expiring during such year.
- (C) (1) On or before the fifteenth day of February of each year every mutual fire insurance company or association shall file with the superintendent a statement showing the aggregate amount of gross premiums collected for insurance against loss or injury and the several items of deduction referred to under paragraph two of subsection (a) hereof, and specifying the aggregate amounts of such gross premiums so collected and the deductions therefrom by city, village, fire district, fire alarm district, or fire protection district in which the property covered by such insurance is located.
- (2) In the case of a mutual fire insurance company or association whose business is confined chiefly to the insurance of sprinklered risks and which is conducted solely for the benefit and protection of its members and which pays no commissions or brokerages for the acquirement of its business, such statement shall, in lieu of the information required pursuant to paragraph one hereof, specify by city, village, fire district, fire alarm district, or fire protection district:
  - (a) the aggregate amount of such gross premiums upon policies on risks located in this state in force at last year-end; and
  - (b) the dividends and returns and the unused or unabsorbed portion of such aggregate amount of gross premiums, computed at the average rate of such dividends and returns and the unused or unabsorbed portion of such gross premiums, actually paid or applied in part payment of any renewal premiums on its annual policies expiring during such year.
- (3) Those provisions of this subsection which would require the determination of the city, village, fire district, fire alarm district, or fire protection district in which an insured property is located shall not apply to policies which insure motor vehicles provided that:
  - (a) the mutual fire insurance company or association allocates the gross premiums and deductions, subject to the tax required by this section, received from such policies by city, village, fire district, fire alarm district, or fire protection district using a percentage of allocation which is based upon the amounts of all other premiums required to be reported by this

section; and

- (b) the mutual fire insurance company or association has received the approval of the superintendent to use this percentage of allocation.
- (D) (1) The amount of all monies which were received by the superintendent on or before the first day of April in each year under the provisions of this section or section nine thousand one hundred four of this article shall be distributed by him no later than the first day of July in such year, after adding any earnings resulting from the investment of such monies and deducting the expenses of collection and distribution. Ten percent of such remaining monies received under this section shall be paid to the treasurer of the Firemen's Association of the State of New York for the support and maintenance of the firemen's home at Hudson, New York, and the balance shall be paid as specified in paragraph two hereof, in amounts which will be that proportion of the balance so to be distributed which the total amount of fire insurance business written by foreign mutual fire insurance companies on property situated in such locality bears to the total amount of fire insurance business written by foreign mutual fire insurance companies on property situated in any and all of the protected localities in the state having treasurers or other fiscal officers as designated in paragraph two hereof afforded fire protection by a fire department or fire company and upon which the tax provided in this section has been paid.
- (2) Such payment shall be made
- (a) in the city of New York to the fire commissioner as treasurer of the fire department of the city of New York, and
  - (b) to the treasurer or other fiscal officer of the fire department affording fire protection in each city, vifilage, fire district, fire alarm district, or fire protection district, or
  - (c) if any such fire department does not have a treasurer or other fiscal officer then to the officer of the authorities having jurisdiction and control of such fire department, or
  - (d) to such other person or entity as shall be designated in any special law to receive such tax, and
  - (e) if such payment is received by the treasurer or other fiscal officer of a fire department or fiscal officer of authorities having jurisdiction and control of such fire department, such treasurer or fiscal officer shall on or before the fifteenth day of July in each year distribute the amount so received to the fire companies constituting the fire department if such fire department is constituted of more than one fire company.
- (3) Except as otherwise provided in any special law, and except as to the Firemen's Association of the State of New York, such tax shall be used for the benefit of, as determined by the members thereof:
- (a) the fire company receiving the tax, but this shall not preclude the payment by a fire company of all or part of such tax to the fire department of which it is a part, or
  - (b) the fire department when such tax is not required under subparagraph (E) of paragraph two of this subsection to be distributed to fire companies.
- (E) The provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation.

## SECTION VI

### Internal Controls and Record keeping Procedures

The Office of the State Comptroller (OSC) has indicated that when a review is to be made of a Fire Company or Benevolent Association (hereinafter known as "the entity"), they will undertake to study and evaluate the internal control system (the system of checks and balances that should be present in the entity's management and record keeping system) dealing with the receipt, management and disbursement of Foreign Fire Insurance Funds ("2% Tax" Money).

REMEMBER, THAT THEIR REVIEW WILL COMMENCE WITH MONEY RECEIVED AFTER JANUARY 1, 1976 TO THE PRESENT.

In addition to examining the control system in place, they will review the board's minutes to determine whether the internal controls are in agreement with the charter provisions, by-laws and/or rules and regulations as set by the board of trustees.

The OSC recommends and will look for a system of internal controls established within the entity to provide reliance that:

- ▶ Cash that should have been received was, in fact, received and recorded promptly and accurately;
- ▶ Cash disbursements have been made for authorized purposes only, and have been properly recorded;
- ▶ Cash is accurately stated and appropriately safeguarded.

Initially, the OSC will review the governing board's by-laws or rules and regulations to determine if they have provisions dealing with:

- ▶ A procedure for approving expenditures;
- ▶ Required signatures on checks;
- ▶ Procedures and documentation required for the approval of relief or disability payments;
- ▶ Designation of depositories and the officers responsible for handling cash;
- ▶ Requirements for the bonding of individuals who have access to cash and other assets;
- ▶ Any other information relating to these monies.

The examiner will then review local policies, minutes of the governing board and/or by-laws to determine if there are any special provisions regarding disposition of 2% Tax monies. They will verify that the expenditure of 2% Tax monies is in compliance with the statutes, local policies and for the benefit of all firefighters in the department/company/association. The disbursement process can be safeguarded by requiring that:

- ▶ All disbursements are made by check, except for legitimate petty cash expenditures;
- ▶ Checks should be press-numbered and contain the name of the corporation;
- ▶ Voided checks should be filed and saved for future review;
- ▶ Vouchers and other supporting documentation should be available for examination.

The statutes are silent concerning the records that should be maintained, however, OSC recommends that:

- ▶ Cash receipts records should be maintained to identify the date, amount and source of each amount received. The receipt of 2% Tax monies should also be noted in the minutes of the governing board.
- ▶ Cash disbursements records should identify the date, check number, payee and amount of 2% Tax disbursements. Additionally, any disbursement of 2% Tax money should be properly authorized, ideally, by reference to the expenditure in the minutes of the governing board.
- ▶ Finally, the records should identify the amount of any remaining balance of unexpended 2% Tax monies.
- ▶ Supporting records, such as vouchers (claims), invoices, cancelled checks, duplicate deposit slips

and bank statements should also be available and maintained on file for audit and referral purposes.

- ▶ A separate bank account for 2% Tax monies is not required, but is certainly recommended. The intent is to maintain sufficient book records to identify the balance, receipt and disbursement of 2% Tax proceeds separately from the other monies of the entity receiving such funds. Accordingly, the OSC encourages separate bank accounts to help maintain this separate identity of 2% Tax monies. OSC would also strongly encourage the fiscal officer to reconcile the bank accounts monthly to the remaining 2% Tax monies balance in the records. To be able to effectively reconcile these accounts, the fiscal officer would need to have financial information available. One way to accomplish this would be to maintain a separate record with a running balance (such as, a check register). Also, the Chief Fiscal Officer of a fire company or a firemen's benevolent association only has to produce those records which account for 2% Tax monies. Therefore, it is essential that the Chief Fiscal Officer maintain separate 2% Tax money records.
- ▶ Finally, if the records are maintained separately from the entity's other finances, annual report preparation would be that much easier to accomplish.

Ultimately, the measure of how good your entity's system of internal controls and record keeping is the accountability factor. Does your annual financial report truly reflect the entity's financial activity for the recently completed year? Is anyone reconciling the bank accounts to the records? Is anyone verifying that reconciliations are being performed?