



**Handbook of Two Percent
Tax Laws and Guidelines
for Fire Departments**



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.

The Insurance Law outlines the various methods for the disposition of and specifies those entities to receive foreign fire insurance tax. Section 9104 monies are distributed each year to the treasurer of the fire department of the city, village, fire district or other organized authority. If a fire department does not have a treasurer, distribution is made to the chief fiscal officer of that area and in the case of organized territories outside of cities, villages and fire districts, payments are made to the supervisor of the town or towns in which this territory is organized.

Any entity receiving Section 9104 monies must, on or before March 15th of each year, apportion and disburse these monies to the treasurer of each fire company whose obligation it is to render fire protection.

Section 9105 monies are distributed annually to the treasurer of the fire department of each city or village, to the treasurer of every fire district established under the town or county law having a fire department, company or organization, or to the fire department treasurer of any area outside of a city, village or fire district. If a fire department does not have a treasurer, distribution is made to the appropriate chief fiscal officer.

There is one key point regarding Section 9105 money. Unlike 9104 monies, because of the absence of a phrase in Section 9105 that is contained in 9104, relating to the apportionment and disbursement of money to the fire companies, it has been held that 9105 monies may either be disbursed in the same manner as 9104, or held by the fire departments and paid out on behalf of the fire department as a whole.

Checks sent out by the New York State Insurance Department in July include monies received by the Department pursuant to Section 9104 as well as Section 9105.

In the course of examination by the Comptroller, any equitable distribution of these monies is acceptable as long as every fire company within the fire department receives an appropriate share.

If you are anticipating making a particular expenditure with foreign fire insurance money, you should ask

yourself a question:

would this particular expenditure benefit the fire department as a whole, and would the benefit potentially be available to all firefighters?

A few points would be: Foreign fire insurance monies used by a fire company, as a general rule, should not be used for individuals and should generally not be appropriate for items which normally have been considered a municipal charge. Nevertheless, if the company decides upon such expenditure, the State Comptroller will not disapprove.

A checklist has been prepared as a result of past opinions of the State Comptroller regarding the appropriateness of expenditures under Section 9104 and 9105 of the Insurance Law. The list is subdivided into two groups - expenditures which are considered appropriate and inappropriate. The following is only a guide and should not be considered all inclusive.

Expenditures Considered Proper by a Fire Department, But Not a Benevolent Association

Food and refreshment for monthly fire department and fire company meetings: food and refreshment for fires and fire drill:

food and refreshment for firefighters and their families at picnics and parades, and purchase of fire department jackets; purchase of furniture and air conditioning and radios and T.V. sets for the club room or for use of the firefighters in general; expenses for the annual firefighters banquet, Christmas party, or firefighters picnic; radio receiving devices for firefighters.

Expenditures Considered Improper by a Fire Department

Donations to outside fire departments for the benefit of members injured or killed in the line of duty: payments of salaries to the secretary or treasurer of the fire department (except as to administration of two percent monies), fees and associated expenses for delegates attending firefighters conventions, except for instruction in administrative matters.

Fees and associated expenses for members attending special schools and courses for fire department services. Prizes and associated expenses for posters and essay contests on Fire Prevention Week; temporary medical aid and assistance to disaster victims: prizes and associated expenses for annual awards to the most active firefighter during the year: expenses for annual Halloween or Christmas party for all of the children in the fire district:

payment of compensation to officers or employees, and loans to individuals.

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 fire company or your fire department, the only thing that they will be interested in is your records regarding foreign fire insurance, so a separate

checking account would enable fire company business to remain private.

The clerk or secretary of the fire company or department 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 can be some kind of evidence to support each payment, staple it to the check. Together they will evidence the reported expenditures.

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

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. Normally that would include copies of insurance policies, if money was used for extra insurance for firemen, a copy of an invoice or a receiving record, etc.

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 fire company or department was examined. In addition, it will indicate any areas of noncompliance.

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.

The major uses of foreign fire insurance monies by fire companies were banquets and picnics, refreshments for monthly meetings, purchasing and maintenance of recreational equipment, insurance, jackets and uniforms for firefighters.

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

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: 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-3 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-4 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-5 Question: Should the 2% tax be kept separate or in the regular company fund?

Answer: it is always best that it be kept in a separate account.

Q-6 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-7 Question: Are the so-called home owners policies exempt from the 2% tax?

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

Q-8 Question: If there are several companies splitting the 2% tax in one community, can it be split according to the service rendered?

Answer: The Insurance Law specifies that the 2% tax money shall be collected by the treasurer of the fire department and by him paid to the treasurer of each company in the department. The distribution would be equal unless the companies otherwise agree between them.

Q-9 Question: Who gets the 2% tax refund on property under Town or County ownership?

Answer: If these properties are insured by foreign fire insurance companies, the fire department protecting the area would collect this tax.

Q-10 Question: Can we legally buy equipment for our fire truck from the 2% fund?

Answer: Where the 2% tax is paid to the fire department, the funds may be used to buy fire equipment.

Q-11 Question: Can you buy stocks and bonds with the 2% tax money received?

Answer: You may buy stocks and bonds with the 2% tax money.

Q-12 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 an exempt or benevolent association.

Q-13 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-14 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-15 Question: Can life insurance policies for members be paid from General Account not 2% tax?

Answer: Yes.

Q-16: 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.

SECTION III

Suggested Guidelines for Management of 2% Funds by Fire Departments

Fire Departments Do:

- Make use of funds where all members have the opportunity to share alike in their distribution.
- Have the option to invest these funds.
- Purchase group life insurance for the entire membership.
- Have the option of purchase of personal equipment. Building and Capital expenditures should be the responsibility of the municipal charges.
- Have the option to purchase personal equipment and pay for part of it and have the individual pay part, whether it is a token payment on the individual's behalf or 50-50 or whatever.
- Use for food and refreshments for monthly meetings.
- Use for food and refreshments at fires or drills.
- Use the monies for parade expenses.
- Use for fees to lawyers, auditors, administrative services and bonafide delegates.
- Use your 2% money for gifts to the Firemen's Home Endowment Fund.

Fire Departments Do Not:

- Make donations to other benevolent associations.
- Make donations to outside fire departments for the benefit of members injured or killed in the line of duty.
- Pay fees and expenses for members attending schools or classes.
- Aid disaster victims.
- Use for prizes and expenses for Fire Prevention Poster and Essay Contests.
- Use for expenses of children's Christmas or Halloween parties.
- Make loans for repayment.

SECTION IV

Opinions

OPNS ST COMP, NO. 82-10

FOREIGN FIRE INSURANCE TAXES - Particular uses (cash payments to firemen); (inviting non-members to fire department parties).

INSURANCE LAW §~ 553, 554: Foreign fire insurance tax monies may not be expended for direct cash payments to paid or volunteer firemen. Such moneys may be used to finance a party to which non-members of the department will be invited provided the members of the department determine that such expenditure is for the use and benefit of the fire department.

We have received a request for an opinion as to whether foreign fire insurance tax monies may be expended by a fire department to make cash payments to members of the department who choose not to attend department parties which are financed with such tax monies. We are also asked whether it is proper to invite non-members of the department to a party being financed with foreign fire insurance tax monies.

Foreign fire insurance tax monies are those monies distributed on behalf of foreign and alien insurance companies pursuant to sections 553 and 554 of the Insurance Law. Briefly, those sections provide that, in the absence of a special act designating a particular person as recipient of the monies, such monies are to be paid to the treasurer of the municipal or fire district fire department or, if no such office exists, to the treasurer of the municipality or fire district, to be applied for the use and benefit of the fire department.

In exercising our role as the auditor of expenditures of these monies (see General Municipal Law, oo~ 30-a, 33-a), the Office of State Comptroller has taken a very liberal position with respect to the purposes for which such monies may be expended. This liberal position is justified by the intentions of the State Legislature in providing for distribution of the monies collected from the tax on foreign and alien insurance companies. Commenting on legislative intent in *Trustees of the Exempt Firemen's Benevolent Fund of the City of New York v Roome*, 93 NY 313, the Court of Appeals stated:

"The appropriation was to the fire department. What use they would make of it — to what purpose apply it — was left to them to determine where they had not already determined."

Accordingly, we have expressed the view that, in the absence of a special act, foreign fire insurance tax monies may be expended for any purpose which the members of the fire department and the department, municipal or district treasurer, as the case might be, determine to be for the use and benefit of the fire department (Opns St Comp, 1981, No. 81-146; Opns St Comp, 1979, No. 79-627). Of course, expenditures for illegal purposes or for purposes which are contrary to public policy would be improper. Presumably, the intentions of the members of the fire department would be ascertained from a majority vote of the members. With respect to the role of the department, municipal or district treasurer, we have stated that he is not authorized to veto proposed expenditures which have been approved by a majority of the members of the fire department unless he, in good faith, believes an expenditure to be illegal or improper (Opns St Comp, 1981, No. 81-389).

Notwithstanding the liberal approach that has been taken towards use of foreign fire insurance tax monies, at least one court has stated that the monies may not be made available for the personal use of either paid or volunteer firemen (*Wilcox v Schenck*, 52 AD2d 349,383 NYS2d 918). Accordingly, it has been and continues to be our position that direct cash payments of such monies to paid or volunteer firemen would be improper. There fore, the proposed cash payments to firemen not attending parties may not be made.

With respect to inviting non-members of the fire department to a party being financed with foreign fire insurance tax monies, we see no impropriety in this practice provided that the members of the fire department, by majority vote, have determined that such expenditure is for the use and benefit of the fire department.

January 8, 1982

Mr. Gerald R. Ginter
Village of Northville

OPN NO. 79-813

Mr. Bedford F. Brown
9 Bursall Drive
Port Chester, New York 10573

Re: Village of Port Chester Dear Mr. Brown:

This is in reply to your letter in which you ask whether paid firemen as well as volunteer firemen in the Village of Port Chester fire department are eligible to receive monies derived from the two percent tax imposed on premiums of foreign fire insurance policies by sections 553 and 554 of the Insurance Law.

In the absence of a special act creating an exempt volunteer firemen's benevolent association, foreign fire insurance tax monies are required to be turned over to either the treasurer of the fire department or, if no such office exists, to the treasurer of the municipality or fire district, for the "use and benefit of the fire department" and the company or companies comprising the same.

It has been judicially determined that, in a fire department consisting of both paid and volunteer firemen, both the paid and volunteer firemen are entitled to share in the distribution of foreign fire insurance tax monies (*Cary v Oneida*, 158 App Div 773, 144 NYS 57; *Eisenger v Stein*, 57 Misc 2d 16, 290 NYS2d 979). Such monies may be apportioned between the paid volunteer firemen in any equitable manner (*Opns St Comp*, 1979, No. 79-182, as yet unreported).

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

January 29, 1980

Sincerely,

EDWARD V. REGAN
State Comptroller
by
Kenneth F. Hartman
Associate Counsel

INSURANCE LAW, §~ 553, 554: The City of Corning may expend foreign fire insurance fund monies to reimburse the Corning Fire Fighters association for losses which the Association incurred in a fund raising event, provided that it is determined by the members of the fire department and the city treasurer (chamberlain) that such expenditure is for the use and benefit of the fire department. All prior opinions inconsistent with this opinion are hereby superseded.

OPN NO. 79-627

Richard P. Rossettie, Esq.

City Attorney

Corning, New York

Re: City of Corning Dear Mr. Rossettie:

This is in reply to your letter in which you ask whether monies in the foreign fire insurance fund may be expended to reimburse the Corning Fire Fighters Association for losses which the Association incurred in conducting a fund raising event.

In the past, this Department has expressed the view that foreign fire insurance fund monies paid to the treasurer of the fire department or, where there is no department, to the treasurer of the municipality, must be expended in a manner which will benefit the department as a whole or provide a benefit which is equally available to all members (32 Opns St Comp, 1976, p4). This opinion was predicated on identical language appearing in both sections 553 and 554 of the Insurance Law providing that such monies may be used for "the use and benefit of the fire department" and it was intended to give local officials a clearer guide line to follow in evaluating proposed expenditures of foreign fire insurance fund monies.

Experience has shown that strict application of this guideline may, in some cases, result in overly restrictive determinations as to the propriety of expenditures from the foreign fire insurance fund. Accordingly, we now feel that the statutory intent that fund monies be used for "the use and benefit of the fire department" could best be effected by having the members of the department and the fire department or municipal or fire district treasurer, as the case might be, determine whether the proposed expenditure is for the use and benefit of the department. These individuals are in the best position to make a determination as to which expenditures will be most beneficial to the fire department.

In determining whether a proposed expenditure is for the use and benefit of the fire department, one factor which may be considered is whether the proposed expenditure would benefit the department as a whole or provide a benefit which is equally available to everyone. However, we no longer feel that this should be the exclusive test applied to determine the validity of proposed expenditures. Of course, expenditures for illegal purposes or for purposes which are contrary to public policy would be improper. All prior opinions inconsistent with the views expressed herein are hereby superseded.

In view of the foregoing, the City of Corning may expend foreign fire insurance fund monies to reimburse the Corning Fire Fighters Association for losses which the Association incurred in conducting a fund raising event provided that it is determined by the members of the fire department and the city treasurer (chamberlain) that such expenditure is for the use and benefit of the fire department.

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

January 21, 1980

Sincerely,

EDWARD V. REGAN

State Comptroller

by

Kenneth F. Hartman
Associate Counsel

OPN NO. 89-16

FOREIGN FIRE INSURANCE TAXES - Particular Uses

(publication of newsletter)

INSURANCE LAW, §~ 9104, 9105: Except as otherwise provided by a special act, the members of the fire department or, in the case of a multi-company fire department, the members of each company, must determine how foreign fire insurance tax monies are to be used for the benefit of the department or company. However, the treasurer having custody of these monies should not permit expenditures for illegal or improper purposes. Should the members decide to use these monies to pay for the publication of a fire department or company newsletter, the monies may be expended by the treasurer for that purpose.

You ask whether foreign fire insurance tax monies may be expended to pay for the publication of a fire department newsletter.

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. Typically, such special laws are acts of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance tax monies.

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. This requirement, however, does not preclude a company from paying all or a portion of the tax to the fire department of which it is part.

Prior to the enactment of the 1988 legislation, we concluded in a series of opinions that foreign fire insurance tax monies could not be expended for illegal purposes or purposes contrary to public policy (see, e.g., 1987 Opns St Comp Nos. 87-88, p 130; 1982 Opns St Comp No. 82-10, A12; 1981 Opns St Comp Nos. 81-49 and 81-146, pp 51 and 151, respectively; 1979 Opns St Comp No. 79-627, p120). We also concluded that the treasurer having custody of foreign fire insurance tax monies should not permit such monies to be expended for a purpose which the treasurer, in good faith, believes to be illegal or improper, even if the expenditure has been approved by a majority of the membership, because the treasurer could conceivably be held liable for the expenditure of such monies for an illegal or improper purpose (1981 Opns St Comp No. 81 -389, p 426; see also Opn No. 87-88, supra; Opn 82-10, supra; Opn nos. 81-49 and 81-146, supra; Opn 79-627, supra; 1979 Opns St Comp No. 79-680, p 138). We believe that these conclusions continue to be valid because the 1988 legislation did not change the general purpose for which foreign fire insurance tax monies can be expended, nor did that legislation absolve treasurers having custody of such monies from liability for permitting illegal or improper expenditures.

Thus, except where there is a special act of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance tax monies, such monies may be expended for any purpose, other than an illegal purpose or a purpose contrary to public policy, which the members of the fire department or company, as the case may be, determine to be for the benefit of the fire department or company. The treasurer having custody of the monies, however, should not permit the monies to be used for what he or she, in good faith, believes to be an illegal or improper purpose.

On the other hand, if a firemen's benevolent association has been created by special act and is authorized to receive payments of foreign fire insurance tax monies, the monies may be expended only in the manner prescribed by the special act (see, e.g., 1983 Opns St Comp No. 83-120, p151; 1981 Opns St Comp No. 81-328,1 357). Generally, such special acts provide that such monies may only be used for the care and relief of indigent or disabled firemen; however, if a special act is applicable in a particular situation, the act should be carefully reviewed to determine exactly what it provides.

With respect to the expenditure of foreign fire insurance tax monies in this instance, the members of the fire department or, if the company is part of a multi-company fire department, the members of this company must determine how these monies are to be used for the benefit of the department or company. Should the members decide to use those monies to pay for the publication of a fire department newsletter, it is our opinion that the monies may be expended by the treasurer for that purpose.

April 18, 1989

Sandra Henry, Secretary
Breesport Volunteer Fire Company

OPN NO. 90-8

FOREIGN FIRE INSURANCE TAXES - Local Laws

(preemption)LOCAL LAWS - Preemption (foreign fire insurance taxes)

INSURANCE LAW, §~ 9104(g), 9105(e); MUNICIPAL HOME RULE LAW, § 10(1)(i): Pre-existing city charter provisions governing the distribution and use of foreign fire insurance tax monies remain operative following the effective date of Chapter 293 of the Laws of 1988.

You ask whether certain city charter provisions governing the distribution and use of foreign fire insurance tax monies remain effective following the amendment of Insurance Law, §~ 9104 and 9015 by Chapter 293 of the Laws of 1988. Chapter 293, among other things, added language to these statutes that provide that neither section shall be changed, modified or amended by charter, local law, ordinance, resolution or regulation. The city charter provisions in question were enacted first by the State Legislature and then were amended by local laws adopted prior to the enactment of Chapter 293. These charter provisions have the effect of precluding the city's paid firefighters from sharing in some of the foreign fire insurance tax monies.

The distribution and use of foreign fire insurance tax monies are governed generally by Insurance Law, §~9104 and 9105. These sections, as amended by Chapter 293 of the Laws of 1988, provide that except as provided in a "special law", 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 authorities 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 treasurer or fiscal officer receiving the foreign fire insurance tax monies must, in turn, distribute the amount received to the companies constituting the fire department (Insurance Law, §~ 9104[al[4], 9105[dI[2][E]). Each fire department or fire company which receives foreign fire insurance tax monies must use them for the benefit of the department or company, as determined by the membership of the department or company (Insurance Law, §~ 9104[f][1], 9105[d][31), but a fire company in a multi-company fire department is not precluded from paying all or part of its foreign fire insurance tax monies to the fire department of which it is part (see Insurance Law, §~ 9104[fJ[21, 9105[d][3][B]0. In the absence of an express legislative enactment precluding paid firefighters from sharing such monies, sections 9104 and 9105 have been interpreted to require paid firefighters to receive a share of the foreign fire insurance tax monies (see *Renn v Kimbark*, 51 NY2d 189,433 NYS2d 71; *Opns St Comp No. 89-53*, p120).

As noted, Chapter 293 added new subdivisions (g) and (e) to sections 9104 and 9105, respectively, which provide that "[t]he provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation". Prior to the enactment of these provisions, the courts had held that a city, by local law, could supersede a special act of the State Legislature with respect to the recipient of foreign fire insurance tax monies because cities are authorized to enact local laws inconsistent with special laws relating to their property, affairs and government(see *Municipal Home Rule Law, §10[1][i]*, and designation of the recipient of foreign fire insurance tax monies is related to a city's property, affairs and government(*Fire Department of the City of Rochester v City of Rochester*, 23 AD2d 183, 259 NYS2d 517, affd 16 NY2d 933,264 NYS2d 291; *Grumet v Goodbody*, 1 Misc 2d 222, 150 NYS2d 141, affd 309 NY 956). For similar reasons, the courts had also held that a city, by local law, could supersede a special act of the State Legislature with respect to the beneficiaries of the foreign fire insurance tax to expend the class of beneficiaries to include paid firefighters (see *Exempt Volunteer Firemen's Association of Lockport v City of Lockport*, 31 AD2d 311, 297 NYS2d 365) or to restrict the class of beneficiaries to exclude paid firefighters (see *Van Orman v Slade*, 126 AD2d 282, 513 NYS2d 867). Although it is clear that Insurance Law, §~ 9104(g) and 9105(e) now prohibit the provisions of sections 9104 and 9105 from being changed, modified or amended by, inter alia, any local law or charter adopted after the effective date of Chapter 293 (January 1, 1989), the issue raised by this inquiry is whether these new provisions also render ineffective preexisting city charter provisions which differ from

sections 9104 and 9105.

The provisions of Insurance Law, §~ 9104 and 9105, as amended by Chapter 293, are applicable except as provided by “special law” (see Insurance Law, §~ 9104[a][3],[f], 9105[d][2][DJ, [dJ[3]). A “special law” is defined as “[a] state statute which in terms and in effect applies to one or more, but not all. . . cities. . .” (Municipal Home Rule Law, §2[121; see also NY Const, art IX, §3[d][4]). Thus, a city charter provision enacted by the State Legislature is a “special law” because it is a State statute which in terms and in effect applies to one city. Therefore, it appears that the exception for “special laws” in sections 9104 and 9105 preserves pre-existing city charter provisions enacted by the State Legislature.

In reaching the above conclusion, we are aware that Insurance Law, §~ 9104(g)and 9105(e) prohibit the provision of sections 9104 and 9105 from being changed, modified or amended by any “charter”. Read literally, the term “charter” could be construed to include a city charter provision enacted by the State Legislature (see Municipal Home Rule Law, § 2[1], [2]). Such a construction of the term “charter”, however, would be inconsistent with the express exceptions for “special laws” contained in sections 9104 and 9105 and. thus, would create an anomalous distinction between special laws which amend city charters and those which do not, based solely on form, not substance. Further, such a construction would ignore the State Legislature’s authority to enact special laws relating to the property, affairs or government of a city which are inconsistent with general laws (NY Const, art IX, § 2[b][2]; see also Municipal Home Rule Law, § 40; Legislative Law, §~ 55, 56). Therefore, we believe that the term “charter” as used in sections 9104(g) and 9105(e) does not refer to a city charter provision enacted by the State Legislature.

With respect to whether Insurance Law, §~ 9104(g) and 9105(e) supersede a city charter provision which was enacted by local law prior to the effective date of Chapter 293 of the Laws of 1988 and which is inconsistent with the distributional scheme currently contained in sections 9104 and 9105, we note that, generally, statutes are presumed to operate prospectively and not retroactively unless either the statutory language or legislative intent requires a retroactive construction (see McKinney’s Consolidated Laws of NY, Book 1, Statutes § 51). Even if a State statute operates prospectively, however, a local law adopted prior to the statute’s effective date may be superseded if it is demonstrated that the State has clearly evinced a desire to preempt an entire field thereby precluding any further local regulation (see *Jancyn Manufacturing Corp v County of Suffolk*, 71 NY2d 91,524 NYS2d 8).

Where State legislation is adopted preempting a field, a local law regulating the same subject matter is deemed inconsistent with the State’s transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute, because the local law would tend to inhibit the operation of the State’s general law and thereby thwart the operation of the State’s over riding policy concerns (*Albany Area Builders Association v Town of Guilderland*, 74 NY2d 372,547, NYS2d 627). Where, however, a State statute expressly preempts local legislation, but the scope of the preemption is unclear from the face of the statute, the scope of the preemption is a matter of statutory construction requiring consideration of the plain meaning of the statute, the relevant legislative history and the underlying purposes of the supersession clause as a part of the statutory scheme (see *Frew Run Gravel Products Inc. v Carroll*, 71 NY2d 126, 524 NYS2d 25).

With respect to the plain meaning of Insurance Law, §~ 9104(g) and 9105(e), as noted, each of these statutes provides that “[the provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation” (emphasis added). In this regard, we note that the courts have construed the word “shall”, when used as a command, to necessarily indicate the future as to performance (*Stisser v New York Cent. & H. R. R. Co.*, 32 App Div 98,52 NYS 861, *moyden*, 35 App Div 625, 55 NYS 1149; see also *Huttlinger v Royal Dutch West India Mail*, 180 App Div 114, 167 NYS 158; *Seventy-Eighth St. & Broadway Co. v Rosenbaum*, 111 Misc 577, 182 NYS 505). Therefore, it appears that the words “shall not be changed, modified or amended” refer only to the future adoption of local laws. Further, Insurance Law, §~ 9104(g) and 9105(e), on their face, do not purport to repeal or supersede any

pre-existing local enactment (cf. *Radish v Council of City of Lackawanna*, 93 AD2d 559, 462 NYS2d 498, affd 61 NY2d 652, 472 NYS2d 82). Thus, the language of these provisions is in contrast to other statements of preemption which clearly express an intent to supersede pre-existing local laws. For example, Local Finance Law, § 176.00 provides that "... all statutes, local laws, ordinances, rules and regulations, insofar as they relate to the matters herein contained, are hereby superseded.. .". (also see e.g., Real Property Tax Law, § 332, relating to assessors and assessor training, which provides that "[p]rovisions of any general, special, local or other laws which are inconsistent with the provisions of this title shall be inapplicable. . ." and Environmental Conservation Law, § 23-0303[2], relating to the regulation of mining, which states that "[t]he provisions of this article shall supersede all local laws and ordinances relating to the regulation of the oil, gas and solution mining industries. . . Therefore, "reading the language in its natural and most obvious sense" (see *Free Run Gravel Products Inc.*, supra), we believe that the plain meaning of sections 9104(g) and 9105(e) is not to supersede pre-existing local laws, but instead, to prohibit local legislative action on and after January 1, 1989, the effective date of Chapter 293 of the Laws of 1988.

The legislative history of Chapter 293 of the Laws of 1988, including the sponsor's memorandum in support of the bill, makes no specific mention of an intent to supersede pre-existing local enactments. Further, although that memorandum states that Chapter 293 was enacted for the purpose of providing a clear, definite and "uniform" process for distributing foreign fire insurance tax monies "to be followed state-wide", there is no indication that the uniformity to be achieved by this amendment encompassed the supersession of existing local laws. Rather, we believe that the reference to uniformity reflects those changes made by Chapter 293 which eliminate a number of inconsistencies between sections 9104 and 9105. In that respect, Chapter 293 established a uniform, State-wide procedure for the distribution and use of foreign fire insurance tax monies governed by those sections. We further believe that Chapter 293 was not intended to establish a single procedure applicable to all local governments because that enactment retained the language in sections 9104 and 9105 which provides that those statutes shall govern the distribution and use of foreign fire insurance tax monies except as provided by "special law". There are many special laws which vary the distribution and use of foreign fire insurance taxes, such as those which authorize exempt volunteer firemen's benevolent associations to receive and expend such monies (see e.g., L 1989 ch 256). Moreover, the sponsor's memorandum states that the bill will not result in any "substantial change in. . . the ultimate recipient of the funds". In our view, this exception for special laws, suggests that the legislature did not intend for Chapter 293 to have fiscal consequences for beneficiaries entitled to foreign fire insurance tax monies, including those receiving such monies pursuant to a local law.

Thus, because neither the language nor legislative history of Chapter 293 of the Laws of 1988 clearly indicate that the addition of sections 9104(g) and 9105(e) was intended to supersede preexisting local enactments providing different procedures, it is our opinion that pre-existing city charter provisions governing the distribution and use of foreign fire insurance tax monies remain operative following the effective date of Chapter 293 of the Laws of 1988. We do not believe that it would be appropriate to infer an intent on the part of the Legislature to supersede preexisting local enactments where the Legislature itself has failed to expressly so provide.

March 30, 1990

Ralph W. Nash, Esq., City Attorney
City of Ithaca

OPN NO. 89-53

FOREIGN FIRE INSURANCE TAXES - Recipients (basis between or among fire companies in a multi-company fire department)

INSURANCE LAW, §~ 9104,9105: Where foreign fire insurance tax monies are distributed in accordance with Insurance Law, §~ 9104 and 9105, the monies must be allocated between or among the volunteer fire companies of a multi-company fire department in proportion to the active membership of each company. 1979 Opns St Comp No. 79-102 p 19 superseded to the extent inconsistent.

You ask how foreign fire insurance tax monies should be allocated to each volunteer fire company of a multi-company fire district fire department.

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 otherwise provided by a special law enacted by the State Legislature. 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][BJ-[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][4]; 9105[d][2][E]). 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 part of the tax monies to the fire department of which it is part (Insurance Law, § 9104[f][1]; 9105[d][3][A]). Insurance Law, §~ 9104 and 9105, however, do not specify the basis on which the initial recipient of foreign fire insurance tax monies is to allocate those monies between or among the fire companies of a multi-company fire department.

Prior to the enactment of chapter 293 of the Laws of 1988, Insurance Law, § 9104 generally required the treasurer receiving foreign fire insurance tax monies collected pursuant to that section to apportion and pay those monies to the fire company or companies which had the obligation to provide fire protection within the jurisdiction for the use and benefit of the fire department and the company or companies comprising the same. Section 9105 generally required the treasurer receiving monies collected pursuant to its provisions to hold those monies for the use and benefit of the fire department. In 1979 Opns St Comp No. 79-102, p 19, we concluded that the apportionment and payment of foreign fire insurance tax monies to the company or companies comprising a fire department was mandatory under the predecessor statute of section 9105 (former Insurance Law, § 554), but that in either case the apportionment by the treasurer of a multi-company fire department could be made in any equitable manner, including, but not necessarily limited to, the membership in each company.

Subsequent to the issuance of Opn No. 79-102, supra, but prior to the enactment of chapter 293 of the Laws of 1988, two court cases addressed the question of how foreign fire insurance tax proceeds should be allocated within a fire department. In *Renn v Kimbark*, 51 Ny2d 189,433 NYS2d 71 (1980), the Court of Appeals resolved a dispute between a city's paid and volunteer firemen, holding that paid firemen are entitled to a pro rata share of the proceeds of the foreign fire insurance tax because ". . . in the absence of an express legislative enactment precluding the paid firemen of a particular city from sharing in the insurance premium tax, all firemen in the locality were entitled to share ratably in the funds collected pursuant to the Insurance Law" (51 NY2d at 195, 196, 433 NYS2d at 74). Similarly, in subsequent litigation between these same parties, *Renn v Kimbark*, 115 AD2d 112,494 NYS2d 918 (1985), lv denied, 68 NY2d 663, 505 NYS2d 78 (1986), the Appellate Division upheld a determination requiring the distribution of foreign fire insurance tax monies between the paid and volunteer firemen to be made

“strictly on a pro rata basis from their active membership rosters” (115 Ad2d at 113, 494 NYS2d at 919; see also Opns St Comp No. 86-16, p 27). In so doing, the court rejected the contention of the paid firefighters that their allocation should be based on their greater firefighting responsibilities. The court reached its conclusion because pursuant to Insurance Law, §~ 9104 and 9105, foreign fire insurance tax monies are paid to a “unitary fire department” composed of both paid and volunteer firefighters and previous cases “. . . explicitly held that all members of each single [fire] department are to share in the funds on a pro rata basis. . .” (115 AD2d at 113, 114, 494 NYS2d at 920).

After the Renn Decisions were rendered, chapter 293 of the Laws of 1988 amended sections 9104 and 9105, inter alia, to conform many of the provisions of the two sections. The amendments, however, do not affect the applicability of the Renn decisions because sections 9104 and 9105 continue to provide that foreign fire insurance tax monies are paid to the appropriate officer of the fire department or the authority having jurisdiction and control of the department for the use and benefit of the department or the companies comprising the department. Further, while the Renn decisions concerned the allocation of foreign fire insurance tax monies between paid and volunteer firefighters, we believe the reasoning in these decisions is equally applicable to the allocation of foreign fire insurance tax monies between or among the volunteer fire companies of a multi-company fire district fire department pursuant to current sections 9104 and 9105.

Therefore, consistent with the Renn decisions, we conclude that where foreign fire insurance tax monies are allocated in accordance with Insurance Law, §~ 9104 and 9105, the monies must be distributed between or among the volunteer fire companies of a multi-company fire department in proportion to the active membership of each company. Opn No. 79-102, supra, is hereby superseded to the extent it is inconsistent with this conclusion.

December 26, 1989

Kenneth N. Alico, Treasurer

Orchard Park Fire District

OPN NO. 87-88

FOREIGN FIRE INSURANCE TAXES - Particular Uses (interest free loans to firemen); (purchase of fire fighting equipment)

INSURANCE LAW, §~ 9104, 9105: Foreign fire insurance tax

monies may not be used for the purpose of making interest free loans to paid or volunteer firemen.

This is in reply to your letter requesting any information pertaining to permissible expenditures of foreign fire insurance monies. You have particularly asked whether such monies may be used for the purpose of making interest free loans to firemen in connection with their personal purchase of fire-fighting equipment or clothing.

Pursuant to sections 30-a and 33-a of the General Municipal Law, every entity receiving foreign fire insurance monies collected under sections 9104 and 9105 (formerly sections 553 and 554) of the Insurance Law is required to file a report with the State Comptroller relating to the expenditures of such monies and the State Comptroller is authorized to examine the records and accounts of any entity receiving and disbursing foreign fire insurance tax monies. In conjunction with this statutory power, our Office has frequently advised recipients of foreign fire insurance monies concerning their proper use. For general guidance concerning the use of these monies, we therefore, call your attention to the following opinions: Opn Nos. 79-627, 79-680, 81-49, 81-146, 81-328, 82-10 and 86-16.

The above opinions express the view that, except where there is special act of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance monies, collected under Insurance Law, §~ 9104 and 9105, these monies may be expended for any purpose, other than illegal purpose or a purpose contrary to public policy, which the members of the fire department and the department, municipal or fire district treasurer, as the case may be, determine to be for the use and benefit of the fire department. However, if a firemen's benevolent association has been created by special act and is authorized to receive payment of foreign fire insurance monies, the monies may be expended only in the manner prescribed by the special act. Generally, such special acts provide that such monies may only be used for the care and relief of indigent or disabled firemen.

With regard to your specific question concerning the use of foreign fire insurance monies received by a fire department for the purpose of making interest free loans to firemen in connection with their personal purchase of fire-fighting equipment or clothing, it is our opinion that the monies may not be used for that purpose. In *Wilcox v Schenck*, 52 AD2d 349,383 NYS2d 918, the court interpreted the provisions of the Insurance Law pertaining to the use of foreign fire insurance monies and concluded that the monies may not be made available for the personal use of either paid or volunteer firemen. In light of that decision, we have expressed the view that such monies may not be expended for direct cash payments to paid or volunteer firemen (1982 Opns St Comp No. 82-10, p12). It is our opinion that the cited decision also precludes the use of foreign fire insurance monies for the purpose of making interest free loans to firemen.

As an alternative, we note that foreign fire insurance monies may be expended to purchase equipment if it is determined by the members of the fire department and the fire department or municipal treasurer that such expenditure is for the use and benefit of the fire department. In this connection, however, we note that the purchase of equipment is the responsibility of the municipality for whose benefit the department is established and that members of a department may not be compelled to purchase equipment with foreign fire insurance money. Nonetheless, in our opinion, such an expenditure is permissible if voluntarily undertaken (see Opn No. 79-680, supra).

September 23, 1987

Charles A, Ridall, Treasurer
Lysander Volunteer 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, p300 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]; 9105Ed][2][B]-ED]). 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]l4; 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, ch 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

OPN NO.90-34

FOREIGN FIRE INSURANCE TAXES: Recipients (emergency rescue and first aid squads)

GENERAL MUNICIPAL LAW, §209-b(1); INSURANCE LAW, §~9104, 9105: An emergency rescue and first aid squad within a village fire department is not entitled to receive foreign fire insurance tax monies unless authorized by a special law.

You ask whether an emergency rescue and first aid squad within a village fire department is entitled to receive foreign fire insurance tax monies.

The distribution and use of foreign fire insurance tax monies are governed generally by Insurance Law, §~9104 and 9105. These sections, as amended by Chapter 293 of the Laws of 1988, provide that except as provided in a "special law", 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 authorities having jurisdiction and control of the fire department (Insurance Law, §~9104[a][1J-3J, 9105[d][21][BJ-DJ]). In a multi-company fire department, the treasurer or fiscal officer receiving the foreign fire insurance tax monies must, in turn, distribute the amount received to the companies constituting the fire department (Insurance Law, §~9104[a][4], 9105[d][2][E]). Each fire department or fire company which receives foreign fire insurance tax monies must use them for the benefit of the department or company, as determined by the membership of the department or company (Insurance Law, §~9104[f][1], 9105[d][3]), but a fire company in a multi-company fire department is not precluded from paying all or a part of its foreign fire insurance tax monies to the fire department of which it is part (see Insurance Law, §~9104[f][2], 9105[d][3][B]). The provisions of sections 9104 and 9105 may not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation (see Insurance Law, §~9104[g], 9105[e].).

General Municipal Law, §209-b(1) authorizes the authorities having control of fire departments and fire companies to organize within such departments or companies emergency rescue and first aid squads composed of firemen who are members of such departments or companies. We have previously concluded that since section 209-b only authorizes emergency rescue and first aid squads to be organized "within" a fire company or fire department, an emergency rescue and first aid squad may be organized either within a fire company or as an independent squad within a fire department, but may not be organized as a separate company within a fire department (see 1981 Opns St Comp No. 81-25, p 24; 1977 Opns St Comp No. 77-91, unreported; 1971 Opns St Comp No. 71-754, unreported). Thus, although an emergency rescue and first aid squad may be a component of a fire company or a fire department, it is not a "fire company" or "fire department".

Therefore, based on the foregoing, we believe that an emergency rescue and first aid squad is not entitled to receive foreign fire insurance tax monies pursuant to Insurance Law, §~9104 and 9105 because it is not a fire company or fire department. Further, since sections 9104 and 9105 prohibit the adoption of inconsistent local legislation (see *Maclsaac v City of Poughkeepsie*, 158 AD2d 140, NYS2d. . .; 1990 Opns St Comp No. 90-20, p 48), we also believe that a village may not adopt a local law providing for an emergency rescue and first aid squad to receive foreign fire insurance tax monies. Accordingly, in our opinion, an emergency rescue and be expended. This liberal position is justified by the intentions of the State Legislature in providing for distribution of the monies collected from the tax on foreign and alien insurance companies. Commenting on legislative intent in *Trustees of the Exempt Firemen's Benevolent Fund of the City of New York v Roome*, 93 NY 313, the Court of Appeals stated: "The appropriation was to the fire department. What use they would make of it — to what purpose apply it — was left to them to determine where they had not already determined."

Accordingly, we have expressed the view that, in the absence of a special act, foreign fire insurance tax

monies may be expended for any purpose which the members of the fire department and the department, municipal or district treasurer, as the case might be, determine to be for the use and benefit of the fire department (Opns St Comp, 1981, No. 81-146; Opns St Comp, 1979, No. 79-627). Of course, expenditures for illegal purposes or for purposes which are contrary to public policy would be improper. Presumably, the intentions of the members of the fire department would be ascertained from a majority vote of the members. With respect to the role of the department, municipal or district treasurer, we have stated that he is not authorized to veto proposed expenditures which have been approved by a majority of the members of the fire department unless he, in good faith, believes an expenditure to be illegal or improper (Opns St Comp, 1981, No. 81-389).

Notwithstanding the liberal approach that has been taken towards use of foreign fire insurance tax monies, at least one court has stated that the monies may not be made available for the personal use of either paid or volunteer firemen (Wilcox v Schenck, 52 AD2d 349,383 NYS2d 918). Accordingly, it has been and continues to be our position that direct cash payments of such monies to paid or volunteer firemen would be improper. There fore, the proposed cash payments to firemen not attending parties may not be made.

With respect to inviting non-members of the fire department to a party being financed with foreign fire insurance tax monies, we see no impropriety in this practice provided that the members of the fire department, by majority vote, have determined that such expenditure is for the use and benefit of the fire department.

January 8, 1982
Mr. Gerald R. Ginter
Village of Northville

OPN NO. 79-813

Mr. Bedford F. Brown
9 Bursall Drive
Port Chester, New York 10573

Re: Village of Port Chester Dear Mr. Brown:

This is in reply to your letter in which you ask whether paid firemen as well as volunteer firemen in the Village of Port Chester fire department are eligible to receive monies derived from the two percent tax imposed on premiums of foreign fire insurance policies by sections 553 and 554 of the Insurance Law.

In the absence of a special act creating an exempt volunteer firemen's benevolent association, foreign fire insurance tax monies are required to be turned over to either the treasurer of the fire department or, if no such office exists, to the treasurer of the municipality or fire district, for the "use and benefit of the fire department" and the company or companies comprising the same.

It has been judicially determined that, in a fire department consisting of both paid and volunteer firemen, both the paid and volunteer firemen are entitled to share in the distribution of foreign fire insurance tax monies (Cary v Oneida, 158 App Div 773, 144 NYS 57; Eisenger v Stein, 57 Misc 2d 16, 290 NYS2d 979). Such monies may be apportioned between the paid volunteer firemen in any equitable manner (Opns St Comp, 1979, No. 79-182, as yet unreported).

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

January 29, 1980

Sincerely,

EDWARD V. REGAN
State Comptroller
by
Kenneth F. Hartman
Associate Counsel

INSURANCE LAW, §~ 553, 554: The City of Corning may expend foreign fire insurance fund monies to reimburse the Corning Fire Fighters association for losses which the Association incurred in a fund raising event, provided that it is determined by the members of the fire department and the city treasurer (chamberlain) that such expenditure is for the use and benefit of the fire department. All prior opinions inconsistent with this opinion are hereby superseded.

OPN NO. 79-627
Richard P. Rossettie, Esq.
City Attorney
Corning, New York

Re: City of Corning
Dear Mr. Rossettie:

This is in reply to your letter in which you ask whether monies in the foreign fire insurance fund may be expended to reimburse the Corning Fire Fighters Association for losses which the Association incurred in conducting a fund raising event.

In the past, this Department has expressed the view that foreign fire insurance fund monies paid to the treasurer of the fire department or, where there is no department, to the treasurer of the municipality, must be expended in a manner which will benefit the department as a whole or provide a benefit which is equally available to all members (32 Opns St Comp, 1976, p4). This opinion was predicated on identical language appearing in both sections 553 and 554 of the Insurance Law providing that such monies may be used for "the use and benefit of the fire department" and it was intended to give local officials a clearer guide line to follow in evaluating proposed expenditures of foreign fire insurance fund monies.

Experience has shown that strict application of this guideline may, in some cases, result in overly restrictive determinations as to the propriety of expenditures from the foreign fire insurance fund. Accordingly, we now feel that the statutory intent that fund monies be used for "the use and benefit of the fire department" could best be effected by having the members of the department and the fire department or municipal or fire district treasurer, as the case might be, determine whether the proposed expenditure is for the use and benefit of the department. These individuals are in the best position to make a determination as to which expenditures will be most beneficial to the fire department.

In determining whether a proposed expenditure is for the use and benefit of the fire department, one factor which may be considered is whether the proposed expenditure would benefit the department as a whole or provide a benefit which is equally available to everyone. However, we no longer feel that this should be the exclusive test applied to determine the validity of proposed expenditures. Of course, expenditures for illegal purposes or for purposes which are contrary to public policy would be improper. All prior opinions inconsistent with the views expressed herein are hereby superseded.

In view of the foregoing, the City of Corning may expend foreign fire insurance fund monies to reimburse the Corning Fire Fighters Association for losses which the Association incurred in conducting a fund raising event provided that it is determined by the members of the fire department and the city treasurer (chamberlain) that such expenditure is for the use and benefit of the fire department.

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

January 21, 1980

Sincerely,

EDWARD V. REGAN
State Comptroller
by
Kenneth F. Hartman
Associate Counsel

OPN NO. 89-16

FOREIGN FIRE INSURANCE TAXES - Particular Uses

(publication of newsletter)

INSURANCE LAW, §~ 9104, 9105: Except as otherwise provided by a special act, the members of the fire department or, in the case of a multi-company fire department, the members of each company, must determine how foreign fire insurance tax monies are to be used for the benefit of the department or company. However, the treasurer having custody of these monies should not permit expenditures for illegal or improper purposes. Should the members decide to use these monies to pay for the publication of a fire department or company newsletter, the monies may be expended by the treasurer for that purpose.

You ask whether foreign fire insurance tax monies may be expended to pay for the publication of a fire department newsletter.

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. Typically, such special laws are acts of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance tax monies.

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. This requirement, however, does not preclude a company from paying all or a portion of the tax to the fire department of which it is part.

Prior to the enactment of the 1988 legislation, we concluded in a series of opinions that foreign fire insurance tax monies could not be expended for illegal purposes or purposes contrary to public policy (see, e.g., 1987 Opns St Comp Nos. 87-88, p 130; 1982 Opns St Comp No. 82-10, p12; 1981 Opns St Comp Nos. 81-49 and 81-146, pp⁵¹ and 151, respectively; 1979 Opns St Comp No. 79-627, p120). We also concluded that the treasurer having custody of foreign fire insurance tax monies should not permit such monies to be expended for a purpose which the treasurer, in good faith, believes to be illegal or improper, even if the expenditure has been approved by a majority of the membership, because the treasurer could conceivably be held liable for the expenditure of such monies for an illegal or improper purpose (1981 Opns St Comp No. 81 -389, p 426; see also Opn No. 87-88, supra; Opn 82-10, supra; Opn nos. 81-49 and 81-146, supra; Opn 79-627, supra; 1979 Opns St Comp No. 79-680, p 138). We believe that these conclusions continue to be valid because the 1988 legislation did not change the general purpose for which foreign fire insurance tax monies can be expended, nor did that legislation absolve treasurers having custody of such monies from liability for permitting illegal or improper expenditures.

Thus, except where there is a special act of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance tax monies, such monies may be expended for any purpose, other than an illegal purpose or a purpose contrary to public policy, which the members of the fire department or company, as the case may be, determine to be for the benefit of the fire department or company. The treasurer having custody of the monies, however, should not permit the monies to be used for what he or she, in good faith, believes to be an illegal or improper purpose.

On the other hand, if a firemen's benevolent association has been created by special act and is authorized

to receive payments of foreign fire insurance tax monies, the monies may be expended only in the manner prescribed by the special act (see, e.g., 1983 Opns St Comp No. 83-120, p151; 1981 Opns St Comp No. 81-328,1 357). Generally, such special acts provide that such monies may only be used for the care and relief of indigent or disabled firemen; however, if a special act is applicable in a particular situation, the act should be carefully reviewed to determine exactly what it provides.

With respect to the expenditure of foreign fire insurance tax monies in this instance, the members of the fire department or, if the company is part of a multi-company fire department, the members of this company must determine how these monies are to be used for the benefit of the department or company. Should the members decide to use those monies to pay for the publication of a fire department newsletter, it is our opinion that the monies may be expended by the treasurer for that purpose.

April 18, 1989

Sandra Henry, Secretary
Breesport Volunteer Fire Company

OPN NO. 90-8

FOREIGN FIRE INSURANCE TAXES - Local Laws

(preemption)

LOCAL LAWS — Preemption (foreign fire insurance taxes)

INSURANCE LAW, §~ 9104(g), 9105(e); MUNICIPAL HOME RULE LAW, § 10(1)(i): Pre-existing city charter provisions governing the distribution and use of foreign fire insurance tax monies remain operative following the effective date of Chapter 293 of the Laws of 1988.

You ask whether certain city charter provisions governing the distribution and use of foreign fire insurance tax monies remain effective following the amendment of Insurance Law, §~ 9104 and 9015 by Chapter 293 of the Laws of 1988. Chapter 293, among other things, added language to these statutes that provide that neither section shall be changed, modified or amended by charter, local law, ordinance, resolution or regulation. The city charter provisions in question were enacted first by the State Legislature and then were amended by local laws adopted prior to the enactment of Chapter 293. These charter provisions have the effect of precluding the city's paid firefighters from sharing in some of the foreign fire insurance tax monies.

The distribution and use of foreign fire insurance tax monies are governed generally by Insurance Law, §~9104 and 9105. These sections, as amended by Chapter 293 of the Laws of 1988, provide that except as provided in a "special law", 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 authorities 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 treasurer or fiscal officer receiving the foreign fire insurance tax monies must, in turn, distribute the amount received to the companies constituting the fire department (Insurance Law, §~ 9104[al[4], 9105[d][2][E]). Each fire department or fire company which receives foreign fire insurance tax monies must use them for the benefit of the department or company, as determined by the membership of the department or company (Insurance Law, §~ 9104[f][1], 9105[d][31]), but a fire company in a multi-company fire department is not precluded from paying all or part of its foreign fire insurance tax monies to the fire department of which it is part (see Insurance Law, §~ 9104[fJ[21, 9105[d][3][B]0. In the absence of an express legislative enactment precluding paid firefighters from sharing such monies, sections 9104 and 9105 have been interpreted to require paid firefighters to receive a share of the foreign fire insurance tax monies (see *Renn v Kimbark*, 51 NY2d 189,433 NYS2d 71; *Opns St Comp No. 89-53*, p120).

As noted, Chapter 293 added new subdivisions (g) and (e) to sections 9104 and 9105, respectively, which provide that "[t]he provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation". Prior to the enactment of these provisions, the courts had held that a city, by local law, could supersede a special act of the State Legislature with respect to the recipient of foreign fire insurance tax monies because cities are authorized to enact local laws inconsistent with special laws relating to their property, affairs and government(see *Municipal Home Rule Law, §10[1][i]*, and designation of the recipient of foreign fire insurance tax monies is related to a city's property, affairs and government(*Fire Department of the City of Rochester v City of Rochester*, 23 AD2d 183, 259 NYS2d517, affd 16 NY2d 933,264 NYS2d 291; *Grumet v Goodbody*, I Misc 2d 222, 150 NYS2d 141, affd 309 NY 956). For similar reasons, the courts had also held that a city, by local law, could supersede a special act of the State Legislature with respect to the beneficiaries of the foreign fire insurance tax to

expand the class of beneficiaries to include paid firefighters (see *Exempt Volunteer Firemen's Association of Lockport v City of Lockport*, 31 AD2d 311, 297 NYS2d 365) or to restrict the class of beneficiaries to exclude paid firefighters (see *Van Orman v Slade*, 126 AD2d 282, 513 NYS2d 867). Although it is clear that Insurance Law, §~ 9104(g) and 9105(e) now prohibit the provisions of sections 9104 and 9105 from being changed, modified or amended by, inter alia, any local law or charter adopted after the effective date of Chapter 293 (January 1, 1989), the issue raised by this inquiry is whether these new provisions also render ineffective preexisting city charter provisions which differ from sections 9104 and 9105.

The provisions of Insurance Law, §~ 9104 and 9105, as amended by Chapter 293, are applicable except as provided by "special law" (see Insurance Law, §~ 9104[a][3], [f], 9105[d][2][DJ, [dJ[3]). A "special law" is defined as "[a] state statute which in terms and in effect applies to one or more, but not all. . . cities. . ." (Municipal Home Rule Law, §2[121; see also NY Const, art IX, §3[d][4]). Thus, a city charter provision enacted by the State Legislature is a "special law" because it is a State statute which in terms and in effect applies to one city. Therefore, it appears that the exception for "special laws" in sections 9104 and 9105 preserves pre-existing city charter provisions enacted by the State Legislature.

In reaching the above conclusion, we are aware that Insurance Law, §~ 9104(g) and 9105(e) prohibit the provision of sections 9104 and 9105 from being changed, modified or amended by any "charter". Read literally, the term "charter" could be construed to include a city charter provision enacted by the State Legislature (see Municipal Home Rule Law, § 2[1], [2]). Such a construction of the term "charter", however, would be inconsistent with the express exceptions for "special laws" contained in sections 9104 and 9105 and, thus, would create an anomalous distinction between special laws which amend city charters and those which do not, based solely on form, not substance. Further, such a construction would ignore the State Legislature's authority to enact special laws relating to the property, affairs or government of a city which are inconsistent with general laws (NY Const, art IX, § 2[b][2]; see also Municipal Home Rule Law, § 40; Legislative Law, §~ 55, 56). Therefore, we believe that the term "charter" as used in sections 9104(g) and 9105(e) does not refer to a city charter provision enacted by the State Legislature.

With respect to whether Insurance Law, §~ 9104(g) and 9105(e) supersede a city charter provision which was enacted by local law prior to the effective date of Chapter 293 of the Laws of 1988 and which is inconsistent with the distributional scheme currently contained in sections 9104 and 9105, we note that, generally, statutes are presumed to operate prospectively and not retroactively unless either the statutory language or legislative intent requires a retroactive construction (see McKinney's Consolidated Laws of NY, Book 1, Statutes § 51). Even if a State statute operates prospectively, however, a local law adopted prior to the statute's effective date may be superseded if it is demonstrated that the State has clearly evinced a desire to preempt an entire field thereby precluding any further local regulation (see *Jancyn Manufacturing Corp v County of Suffolk*, 71 NY2d 91, 524 NYS2d 8).

Where State legislation is adopted preempting a field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute, because the local law would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns (*Albany Area Builders Association v Town of Guilderland*, 74 NY2d 372, 547, NYS2d 627). Where, however, a State statute expressly preempts local legislation, but the scope of the preemption is unclear from the face of the statute, the scope of the preemption is a matter of statutory construction requiring consideration of the plain meaning of the statute, the relevant legislative history and the underlying purposes of the supersession clause as a part of the statutory scheme (see *Frew Run Gravel Products Inc. v Carroll*, 71

NY2d 126, 524 NYS2d 25).

With respect to the plain meaning of Insurance Law, § 9104(g) and 9105(e), as noted, each of these statutes provides that “[the provisions of this section shall not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation]” (emphasis added). In this regard, we note that the courts have construed the word “shall”, when used as a command, to necessarily indicate the future as to performance (*Stisser v New York Cent. & H. R. R. Co.*, 32 App Div 98, 52 NYS 861, *moyden*, 35 App Div 625, 55 NYS 1149; see also *Huttlinger v Royal Dutch West India Mail*, 180 App Div 114, 167 NYS 158; *Seventy-Eighth St. & Broadway Co. v Rosenbaum*, 111 Misc 577, 182 NYS 505). Therefore, it appears that the words “shall not be changed, modified or amended” refer only to the future adoption of local laws.

Further, Insurance Law, § 9104(g) and 9105(e), on their face, do not purport to repeal or supersede any pre-existing local enactment (cf. *Radich v Council of City of Lackawanna*, 93 AD2d 559, 462 NYS2d 498, *affd* 61 NY2d 652, 472 NYS2d 82). Thus, the language of these provisions is in contrast to other statements of preemption which clearly express an intent to supersede pre-existing local laws. For example, Local Finance Law, § 176.00 provides that “... all statutes, local laws, ordinances, rules and regulations, insofar as they relate to the matters herein contained, are hereby superseded.. .” (also see e.g., Real Property Tax Law, § 332, relating to assessors and assessor training, which provides that “[p]rovisions of any general, special, local or other laws which are inconsistent with the provisions of this title shall be inapplicable. . .” and Environmental Conservation Law, § 23-0303[2], relating to the regulation of mining, which states that “[t]he provisions of this article shall supersede all local laws and ordinances relating to the regulation of the oil, gas and solution mining industries. . . Therefore, “reading the language in its natural and most obvious sense” (see *Free Run Gravel Products Inc.*, *supra*), we believe that the plain meaning of sections 9104(g) and 9105(e) is not to supersede pre-existing local laws, but instead, to prohibit local legislative action on and after January 1, 1989, the effective date of Chapter 293 of the Laws of 1988.

The legislative history of Chapter 293 of the Laws of 1988, including the sponsor’s memorandum in support of the bill, makes no specific mention of an intent to supersede pre-existing local enactments. Further, although that memorandum states that Chapter 293 was enacted for the purpose of providing a clear, definite and “uniform” process for distributing foreign fire insurance tax monies “to be followed state-wide”, there is no indication that the uniformity to be achieved by this amendment encompassed the supersession of existing local laws. Rather, we believe that the reference to uniformity reflects those changes made by Chapter 293 which eliminate a number of inconsistencies between sections 9104 and 9105. In that respect, Chapter 293 established a uniform, State-wide procedure for the distribution and use of foreign fire insurance tax monies governed by those sections. We further believe that Chapter 293 was not intended to establish a single procedure applicable to all local governments because that enactment retained the language in sections 9104 and 9105 which provides that those statutes shall govern the distribution and use of foreign fire insurance tax monies except as provided by “special law”. There are many special laws which vary the distribution and use of foreign fire insurance taxes, such as those which authorize exempt volunteer firemen’s benevolent associations to receive and expend such monies (see e.g., L 1989 ch 256). Moreover, the sponsor’s memorandum states that the bill will not result in any “substantial change in. . . the ultimate recipient of the funds”. In our view, this exception for special laws, suggests that the legislature did not intend for Chapter 293 to have fiscal consequences for beneficiaries entitled to foreign fire insurance tax monies, including those receiving such monies pursuant to a local law.

Thus, because neither the language nor legislative history of Chapter 293 of the Laws of 1988 clearly

indicate that the addition of sections 9104(g) and 9105(e) was intended to supersede preexisting local enactments providing different procedures, it is our opinion that pre-existing city charter provisions governing the distribution and use of foreign fire insurance tax monies remain operative following the effective date of Chapter 293 of the Laws of 1988. We do not believe that it would be appropriate to infer an intent on the part of the Legislature to supersede preexisting local enactments where the Legislature itself has failed to expressly so provide.

March 30, 1990

Ralph W. Nash, Esq., City Attorney

City of Ithaca

OPN NO. 89-53

FOREIGN FIRE INSURANCE TAXES - Recipients (basis between or among fire companies in a multi-company fire department)

INSURANCE LAW, §~ 9104,9105: Where foreign fire insurance tax monies are distributed in accordance with Insurance Law, §~ 9104 and 9105, the monies must be allocated between or among the volunteer fire companies of a multi-company fire department in proportion to the active membership of each company. 1979 Opns St Comp No. 79-102 p 19 superseded to the extent inconsistent.

You ask how foreign fire insurance tax monies should be allocated to each volunteer fire company of a multi-company fire district fire department.

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 otherwise provided by a special law enacted by the State Legislature. 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][BJ-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][4]; 9105[d][2][E]). 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 part of the tax monies to the fire department of which it is part (Insurance Law, § 9104[f][1]; 9105[d][3][A]). Insurance Law, §~ 9104 and 9105, however, do not specify the basis on which the initial recipient of foreign fire insurance tax monies is to allocate those monies between or among the fire companies of a multi-company fire department.

Prior to the enactment of chapter 293 of the Laws of 1988, Insurance Law, § 9104 generally required the treasurer receiving foreign fire insurance tax monies collected pursuant to that section to apportion and pay those monies to the fire company or companies which had the obligation to provide fire protection within the jurisdiction for the use and benefit of the fire department and the company or companies comprising the same. Section 9105 generally required the treasurer receiving monies collected pursuant to its provisions to hold those monies for the use and benefit of the fire department. In 1979 Opns St Comp No. 79-102, p 19, we concluded that the apportionment and payment of foreign fire insurance tax monies to the company or companies comprising a fire department was mandatory under the predecessor statute of section 9105 (former Insurance Law, § 554), but that in either case the apportionment by the treasurer of a multi-company fire department could be made in any equitable manner, including, but not necessarily limited to, the membership in each company.

Subsequent to the issuance of Opn No. 79-102, supra, but prior to the enactment of chapter 293 of the Laws of 1988, two court cases addressed the question of how foreign fire insurance tax proceeds should be allocated within a fire department. In *Renn v Kimbark*, 51 Ny2d 189,433 NYS2d 71 (1980), the Court of Appeals resolved a dispute between a city's paid and volunteer firemen, holding that paid firemen are entitled to a pro rata share of the proceeds of the foreign fire insurance tax because ". . . in the absence of an express legislative enactment precluding the paid firemen of a particular city from sharing in the insurance premium tax, all firemen in the locality were entitled to share ratably in the funds collected

pursuant to the Insurance Law” (51 NY2d at 195, 196, 433 NYS2d at 74). Similarly, in subsequent litigation between these same parties, *Renn v Kimbark*, 115 AD2d 112, 494 NYS2d 918 (1985), lv denied, 68 NY2d 663, 505 NYS2d 78 (1986), the Appellate Division upheld a determination requiring the distribution of foreign fire insurance tax monies between the paid and volunteer firemen to be made “strictly on a pro rata basis from their active membership rosters” (115 AD2d at 113, 494 NYS2d at 919; see also *Opns St Comp No. 86-16*, p 27). In so doing, the court rejected the contention of the paid firefighters that their allocation should be based on their greater firefighting responsibilities. The court reached its conclusion because pursuant to Insurance Law, §~ 9104 and 9105, foreign fire insurance tax monies are paid to a “unitary fire department” composed of both paid and volunteer firefighters and previous cases “. . . explicitly held that all members of each single [fire] department are to share in the funds on a pro rata basis. . .” (115 AD2d at 113, 114, 494 NYS2d at 920).

After the *Renn* Decisions were rendered, chapter 293 of the Laws of 1988 amended sections 9104 and 9105, inter alia, to conform many of the provisions of the two sections. The amendments, however, do not affect the applicability of the *Renn* decisions because sections 9104 and 9105 continue to provide that foreign fire insurance tax monies are paid to the appropriate officer of the fire department or the authority having jurisdiction and control of the department for the use and benefit of the department or the companies comprising the department. Further, while the *Renn* decisions concerned the allocation of foreign fire insurance tax monies between paid and volunteer firefighters, we believe the reasoning in these decisions is equally applicable to the allocation of foreign fire insurance tax monies between or among the volunteer fire companies of a multi-company fire district fire department pursuant to current sections 9104 and 9105.

Therefore, consistent with the *Renn* decisions, we conclude that where foreign fire insurance tax monies are allocated in accordance with Insurance Law, §~ 9104 and 9105, the monies must be distributed between or among the volunteer fire companies of a multi-company fire department in proportion to the active membership of each company. *Opn No. 79-102*, supra, is hereby superseded to the extent it is inconsistent with this conclusion.

December 26, 1989

Kenneth N. Alico, Treasurer
Orchard Park Fire District

OPN NO. 87-88

FOREIGN FIRE INSURANCE TAXES - Particular Uses (interest free loans to firemen); (purchase of fire fighting equipment)

INSURANCE LAW, §~ 9104, 9105: Foreign fire insurance tax monies may not be used for the purpose of making interest free loans to paid or volunteer firemen.

This is in reply to your letter requesting any information pertaining to permissible expenditures of foreign fire insurance monies. You have particularly asked whether such monies may be used for the purpose of making interest free loans to firemen in connection with their personal purchase of fire-fighting equipment or clothing.

Pursuant to sections 30-a and 33-a of the General Municipal Law, every entity receiving foreign fire insurance monies collected under sections 9104 and 9105 (formerly sections 553 and 554) of the Insurance Law is required to file a report with the State Comptroller relating to the expenditures of such monies and the State Comptroller is authorized to examine the records and accounts of any entity receiving and disbursing foreign fire insurance tax monies. In conjunction with this statutory power, our Office has frequently advised recipients of foreign fire insurance monies concerning their proper use. For general guidance concerning the use of these monies, we therefore, call your attention to the following opinions: Opn Nos. 79-627, 79-680, 81-49, 81-146, 81-328, 82-10 and 86-16.

The above opinions express the view that, except where there is special act of the State Legislature incorporating an exempt volunteer firemen's benevolent association and authorizing that association to receive and expend foreign fire insurance monies, collected under Insurance Law, §~ 9104 and 9105, these monies may be expended for any purpose, other than illegal purpose or a purpose contrary to public policy, which the members of the fire department and the department, municipal or fire district treasurer, as the case may be, determine to be for the use and benefit of the fire department. However, if a firemen's benevolent association has been created by special act and is authorized to receive payment of foreign fire insurance monies, the monies may be expended only in the manner prescribed by the special act. Generally, such special acts provide that such monies may only be used for the care and relief of indigent or disabled firemen.

With regard to your specific question concerning the use of foreign fire insurance monies received by a fire department for the purpose of making interest free loans to firemen in connection with their personal purchase of fire-fighting equipment or clothing, it is our opinion that the monies may not be used for that purpose. In *Wilcox v Schenck*, 52 AD2d 349,383 NYS2d 918, the court interpreted the provisions of the Insurance Law pertaining to the use of foreign fire insurance monies and concluded that the monies may not be made available for the personal use of either paid or volunteer firemen. In light of that decision, we have expressed the view that such monies may not be expended for direct cash payments to paid or volunteer firemen (1982 Opns St Comp No. 82-10, p12). It is our opinion that the cited decision also precludes the use of foreign fire insurance monies for the purpose of making interest free loans to firemen.

As an alternative, we note that foreign fire insurance monies may be expended to purchase equipment if it is determined by the members of the fire department and the fire department or municipal treasurer that such expenditure is for the use and benefit of the fire department. In this connection, however, we note that the purchase of equipment is the responsibility of the municipality for whose benefit the department is established and that members of a department may not be compelled to purchase equipment with foreign fire insurance money. Nonetheless, in our opinion, such an expenditure is permissible if voluntarily

undertaken (see Opn No. 79-680, supra).

September 23, 1987

Charles A, Ridall, Treasurer
Lysander Volunteer 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, p300 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]; 9105Ed][2][B]-ED)). 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]4; 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, ch 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

OPN NO.90-34

FOREIGN FIRE INSURANCE TAXES: Recipients (emergency rescue and first aid squads)

GENERAL MUNICIPAL LAW, §209-b(1); INSURANCE LAW, §~9104, 9105: An emergency rescue and first aid squad within a village fire department is not entitled to receive foreign fire insurance tax monies unless authorized by a special law.

You ask whether an emergency rescue and first aid squad within a village fire department is entitled to receive foreign fire insurance tax monies.

The distribution and use of foreign fire insurance tax monies are governed generally by Insurance Law, §~9104 and 9105. These sections, as amended by Chapter 293 of the Laws of 1988, provide that except as provided in a "special law", 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 authorities having jurisdiction and control of the fire department (Insurance Law, §~9104[a][1J-[3J, 9105[d][21[BJ-[DJ). In a multi-company fire department, the treasurer or fiscal officer receiving the foreign fire insurance tax monies must, in turn, distribute the amount received to the companies constituting the fire department (Insurance Law, §~9104[a][4], 9105[d][2][E]). Each fire department or fire company which receives foreign fire insurance tax monies must use them for the benefit of the department or company, as determined by the membership of the department or company (Insurance Law, §~9104[f][1], 9105[d][3]), but a fire company in a multi-company fire department is not precluded from paying all or a part of its foreign fire insurance tax monies to the fire department of which it is part (see Insurance Law, §~9104[f][2], 9105[d][3][B]). The provisions of sections 9104 and 9105 may not be changed, modified or amended by any charter, local law, ordinance, resolution or regulation (see Insurance Law, §~9104[g], 9105[e].).

General Municipal Law, §209-b(1) authorizes the authorities having control of fire departments and fire companies to organize within such departments or companies emergency rescue and first aid squads composed of firemen who are members of such departments or companies. We have previously concluded that since section 209-b only authorizes emergency rescue and first aid squads to be organized "within" a fire company or fire department, an emergency rescue and first aid squad may be organized either within a fire company or as an independent squad within a fire department, but may not be organized as a separate company within a fire department (see 1981 Opns St Comp No. 81-25, p 24; 1977 Opns St Comp No. 77-91, unreported; 1971 Opns St Comp No. 71-754, unreported). Thus, although an emergency rescue and first aid squad may be a component of a fire company or a fire department, it is not a "fire company" or "fire department".

Therefore, based on the foregoing, we believe that an emergency rescue and first aid squad is not entitled to receive foreign fire insurance tax monies pursuant to Insurance Law, §~9104 and 9105 because it is not a fire company or fire department. Further, since sections 9104 and 9105 prohibit the adoption of inconsistent local legislation (see *Maclsaac v City of Poughkeepsie*, 158 AD2d 140, NYS2d. . .; 1990 Opns St Comp No. 90-20, p 48), we also believe that a village may not adopt a local law providing for an emergency rescue and first aid squad to receive foreign fire insurance tax monies. Accordingly, in our opinion, an emergency rescue and first aid squad within a village fire department is not entitled to receive foreign fire insurance tax monies unless authorized by a special law enacted by the State Legislature.

Finally, while emergency rescue and first aid squads are not generally entitled to receive foreign fire insurance tax monies, Insurance Law, §~ 9104 and 9105, 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 Opn No. 90-20, supra; 1989 Opns St Comp No. 89-19, p34). Thus, since General Municipal Law, §209-b(1) requires the members of an emergency rescue and first aid squad to be firefighters who are members of the fire department or company, the members of the squad may participate in determining the expenditures to be made with foreign fire insurance tax monies. Further, it is also our opinion that foreign fire insurance tax monies may be expended for purposes of an emergency rescue and first aid squad if the membership of the department or company reasonably determines that the expenditure is for the use and benefit of the department or company.

September 12, 1990

Mike Altonberg, Treasurer
Honeoye Fire Department

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 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, village, 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 (USC) 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 USC 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 USC 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?