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## **New Law Permits Comptroller to Audit Fire Companies**

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Fire companies get ready! The Governor is about to sign a new law that permits the State Comptroller to audit a fire company. In late 2006, the Comptroller will be able to review and comment upon all financial records, policies and practices of the fire company.

The era of fire companies being responsible only to themselves is at an end. Fire companies and their treasurers must become extremely proficient at maintaining financial records, conducting internal audits and implementing policies. Fire companies must begin to file Federal Tax Form 990. Treasurers will need to be very proficient at all aspects of financial record keeping and management.

What are the chances of being audited? Many audits result from a complaint from a resident or even a member. The Comptroller has been sensitive to these complaints in the past and may conduct audits of fire companies upon receiving a complaint or request to do so. Fire companies should be prepared by having their financial practices and policies reviewed by an experienced professional. Bradley M. Pinsky, Esq. conducts these reviews frequently.

Another law about to be signed by the Governor will require that fire companies with gross revenues of \$200,000 or more and contract with a city, town, village or fire district to provide fire protection must obtain an independent audit of its financial records. The Comptroller can lower the revenue level to require audits of fire companies with lesser revenues. If the fire company complies with federal law by filing Federal Income Tax Form 990, the audit need only focus on the expenditure of the fire protection contract revenues. However, if Form 990 is not filed by the fire company, a complete and in depth audit must be conducted. The audit report must be filed with each municipality with which the fire company contracts. This law becomes effective August 1, 2007. Fire companies should prepare now!

All fire companies, regardless of their income, should prepare themselves for either State Comptroller audits or independent audits.

### Step One: Is the fire company actually exempt from paying income taxes?

Fire companies should first ensure that they are actually recognized by the Internal Revenue Service as exempt from federal income tax. Since there is no such thing as an "income tax exempt number", do not rely on the Employer/Tax Identification Number as proof of tax exemption. The I.R.S. maintains a website of all tax exempt entities. [To check your exempt status: Go to [www.emsfirelaw.com](http://www.emsfirelaw.com), click "EMS/FIRE LAWS", and then click on "IRS Tax Exempt Search". Type in the name of your town, village or city and you should see a list of the exempt companies in that area.] If your corporation is not on that list, it is likely that the fire company was never or is no longer recognized as exempt from federal income tax. If this is the case, the fire company may be hit with significant fines, penalties and interest on the unpaid income tax. We can complete the exempt application for you.

### Step Two: Get your record keeping in order!

The most comprehensive part of the audit may be the evaluation of the deposit and expenditure of the fire company's funds. This process will start by an examination of the

financial records of the fire company. If the fire company does not utilize electronic record keeping methods and is not able to produce reconciled balance sheets and profit and loss statements, the comments of the Comptroller could be very harsh.

#### Step Three: Is the fire company filing federal tax returns?

The second step in preparing for a potential audit is to ensure that the fire company is filing its annual federal tax returns. Another law about to be enacted permits the Comptroller to determine whether the fire company has filed federal income tax form 990. Any fire company that has more than twenty-five thousand dollars of total income (before expenses) from any combination of sources must file a 990. This would include income from fire protection contracts, "two-percent" funds, fund raising, donations, investments and gifts. The failure to file form 990 can result in corporate fines of up to \$10,000 a year and fines for the directors and officers of up to \$5,000.

Fire Companies should be utilizing specific categories when maintaining financial records. This is a difficult but critical process. Form 990 cannot be properly completed unless correct financial categories are accurately maintained during the year.

#### Step Four: Implement effective finance policies.

The Comptroller will spend significant time reviewing the policies of fire companies which he audits. Fire companies should enact conflict of interest policies, investment policies, purchasing policies, audit policies, and financial record keeping policies long before an audit. The Comptroller will examine the policies regarding deposits of funds, writing checks, balancing and reconciling the finances, and much more.

How do you get started? Attend our seminars!

We are planning seminars for the upcoming months that will provide attendees with a complete set of policies, practices and appropriate financial recordkeeping requirements. Attendees will be able to prepare themselves for an audit by implementing policies, revising their record keeping practices and implementing proper internal audit procedures.

Seminars are listed under our "conferences/seminars" section.

We are here to help.