

Letter to the Editor: Ameripay Stole \$900,000 from taxpayers and now City had to borrow \$1.25 mil as a result

Did you know that the Clifton City Council was required by the State to bond for the entire loss of the Ameripay scandal before the State would approve the budget? The Council bonded for \$1.25 million to cover the reported \$900,000 loss (and the \$350,000 in interest and penalties) that resulted from Ameripay's failure to make withholding payments on behalf of the City.

As readers may be aware, Ameripay was hired by the City of Clifton to serve as its payroll company. On July 1, 2009, Ameripay filed for Chapter 7 Bankruptcy after the owners of the company were charged with committing securities fraud and payroll-tax schemes that defrauded at least 22 municipalities, several school districts and several private entities of millions of dollars.

In a July 5, 2009 Star Ledger article, City Manager Al Greco is quoted as saying "Clifton had been using Ameripay since 2004, but only in the past six weeks, after court proceedings began, did the city find out the company was not submitting withholding taxes to the federal government. IRS notices of missed payments were diverted from the city's office and sent to Ameripay."

Who is accountable and responsible for this loss? Who is to blame? Other towns who were also defrauded by Ameripay are trying to find out. In Summit (which lost \$1.4 million) the Council voted to hire two investigators who will look at what occurred, procedures used, negligence and potential next steps. The Clifton City Council should do the same. Clifton taxpayers deserve answers and someone must be held accountable for this loss!

Here are some things that I uncovered in my investigation. Back in 2003, the N.J. Department of Community Affairs recognized the risk in hiring a third party payroll company and adopted rules as NJAC 5:30-17.3 and issued a manual entitled "Guide to Electronic Disbursement Controls for Payroll Purposes". On page 1 of this manual, the department states "the practice of contracting out "paying services" to a third party is not to be taken lightly. Security of public funds is at higher risk when administration is contracted to a third party. The rules make it clear that governing bodies must take their fiscal oversight responsibilities very seriously. The local official administering the day-to-day activities must act to minimize risks to loss of funds...The local governing body must formally approve the principle of a third party having access to local unit funds, formally assigning responsibility to an official to oversee the process by enacting an ordinance or resolution and approving all contracts or extensions of contracts...The designated approval officer must be sure the contract meets a series of requirements, focused on internal controls of the local unit and of the contractor."

Under the Contracts Terms and Conditions (NJAC 5:30-17.6) of the manual it states a series of contractual requirements that all contracts between the servicer (the payroll company) and local units (local governments) must contain. "Contracts must: 1) Indemnify the local unit against any losses incurred because of the actions or inactions of the servicer; 2) Require the servicer to be responsible for the errors and omissions of its employees; 3) When a servicer takes local unit funds, they must have adequate insurance to cover losses in amounts at least equal to the highest level of exposure to the local unit for 30 days; ...5) Upon reasonable notice, the servicer shall allow an independent auditor

compensated by the local unit to examine its internal controls and contain adequate provisions to indemnify the local unit against any losses incurred as a result of the actions or inactions of the disbursing organization.”

Clearly, the Department recognized that there significant risks associated with hiring an outside party to handle payments on behalf of local governments. In the case of Ameripay, no one bothered to check if Ameripay was bonded and had the adequate insurance coverage to protect Clifton (and the other communities) from this loss.

The Clifton City Council is the steward of Clifton taxpayer funds. It is their responsibility to get the facts and make a judgement call who is at fault and what procedures were not followed which resulted in this loss of taxpayer funds. Since the City Council is the executive board of this City, they must take the leadership role in this inquiry as Summit has done. In fact, our internal auditors also concluded that internal control procedures must be implemented to ensure funds transferred to the payroll company are remitted to the appropriate Federal and State agencies in a timely fashion.

In fact, the Department of Community Affairs issued a local finance notice to local governments on August 26, 2009 entitled “Risks of Third Party Service Organizations and Ameriplay”. In this notice they state “all local units using a third party payroll services should take advantage of the IRS’ Internet version of the Electronic Federal Tax Payment System (EFTS) as an additional internal control to facilitate employer verification that federal tax payments are being received and credited to their account with the IRS. Also, the State Division of Taxation has an Electronic Funds Transfer Program for employers paying through a debit system, permitting online payments for all eligible taxes and fees.”

Clifton taxpayers can not afford to lose any more money!

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