

Surprise Tax Due After Septic Grants

Feeling 'zapped' by unexpected county 1099s

By Johnette Howard | March 14, 2019 - 2:09pm



By taking advantage of two programs, a county grant and a town rebate, Tim Sheehan and Kate Rossi-Snook were able to install a new nitrogen-reducing septic system at their Shelter Island property. Now they are among the county residents finding out that the grant counts toward their taxable income. *Tim Sheehan*

Homeowners who participated in a Suffolk County grant program designed to defray the installation costs of nitrogen-reducing septic systems to protect local waters have gotten an unwelcome surprise in recent weeks. They unexpectedly received 1099 forms, which report income, from the county comptroller's office signaling they may be liable for thousands of dollars in taxes, contrary to what they were told when they entered the program.

"It definitely feels like a bait and switch," said Dorothy Minnick, a Flanders homeowner who had a new system installed last year after being approved for a county grant.

John M. Kennedy Jr., the Suffolk comptroller, said Tuesday that he had made a decision in January to send 1099s to homeowners participating in Suffolk's Residential Septic Incentive Program for the 2018 tax year. He agreed the action — and some others he has made — directly conflicts with the legal determination made by the Suffolk County attorney's office that guided how the grant program was designed by the County Legislature in 2017, and then implemented by County Executive Steve Bellone in the last two years.

Now, upset homeowners — some of whom consider themselves well versed on the grants given their work for environmental groups or town boards — say they feel blindsided and caught in the crossfire. They were initially told only the designers and contractors who installed new systems would get 1099s from the county, since they would receive money for their work directly.

"I'm in the boat of people who were surprised to get a 1099," said Chris Clapp, a marine scientist with the Nature Conservancy, who is co-chairman of East Hampton Town's water quality technical advisory

committee. “I sought the opinion of some trusted C.P.A.s and tax and finance lawyers that I know, and the general consensus is, you didn’t receive a check, you don’t get issued a 1099.”

“We were told from the outset the county grant would not be taxable income for us as homeowners,” Timothy Sheehan, a Shelter Island resident, said. Mr. Sheehan is concerned that he and his wife, Kate Rossi-Snook, an environmental advocate for Concerned Citizens of Montauk who serves on the East Hampton Town Community Preservation Fund advisory subcommittee, may have to pay about \$3,000 in taxes on the \$10,000 county grant they received.

Mr. Sheehan said he and Ms. Rossi-Snook were vigilant about reading and asking questions about the program; Ms. Minnick said she did the same.

“I’m a huge environmentalist, but the way this turned out is killing me,” Ms. Minnick said.

Ms. Minnick, who relies primarily on Social Security income and earnings as a part-time real estate agent, said if she were taxed on all the county grant and Southampton Town rebate money she received, it would “take me from an 11- percent tax bracket to a 22-percent-plus bracket, because not only am I now being taxed on the grant as additional income — it’s made my entire Social Security income taxable as well, when it otherwise would not have been. I might have to pay two-thirds more. So I’m getting zapped on this big time.”

Ms. Minnick said she is thinking of suing the comptroller’s office — and she is not alone.

Unraveling how this happened is complicated.

East End residents who installed nitrogen-reducing systems in 2017 and 2018 were able to apply to both the nascent Suffolk County grant program, which was capped then at \$11,000 per installation, as well as to complementary \$15,000 rebate programs offered by the Towns of East Hampton, Shelter Island, and Southampton. (The amounts have since been increased.)

By combining two grants homeowners often covered the entire cost and installation of a new system, which commonly runs anywhere from \$14,000 to \$30,000, depending on site-specific challenges.

The town programs in East Hampton and Shelter Island clearly state that homeowners are to treat the rebates, which are provided through 1099s, as income. The county grant program was different.

Mr. Bellone told The Star in April 2017, “We want to get more systems in the ground,” and “I want it to be workable and affordable to the average homeowner. . . . It still comes down to a house-by-house pocketbook issue.” Mr. Bellone said he had received a ruling from the county attorney’s office that homeowners would be spared counting grant money as income if it were paid directly to installers and site designers. Harris Beech, a firm that routinely advises the county government, including the comptroller’s office, reportedly made that determination after seeking advice from outside legal counsel.

Mr. Kennedy — who on Tuesday stressed it is his duty as comptroller to protect the fiscal interests of the county, said he supports the grant program over all — disagrees with the county’s decision about who gets 1099s. He said one of his concerns is that 1099 payments might not comply with I.R.S. rules because they could constitute a disbursement of public funds for “private benefit.”

Mr. Kennedy, a Republican who announced last month he hopes to oppose County Executive Bellone in the next election, blames him for the confusion. Mr. Kennedy said he had asked the county executive's office to get a private ruling from the I.R.S. in August of 2018. "They said no. They refused to do that."

Others trace Mr. Kennedy's challenge to the 1099 policy back at least eight months earlier, to January of 2018. It has been noted that this is not the first year he has changed how the 1099s would be issued.

One vendor who participated in a 2017 installation reported receiving two 1099s for the same job — one for the 2017 tax year noting the grant amount was \$25,000, and a revised 1099 for 2018 reducing that amount to zero. The Star was shown documents corroborating those figures.

"If it did happen, I'm not aware of it," Mr. Kennedy said Tuesday, but he promised to look into it.

Local officials and advocacy groups like the Group for the East End reported that grant participants have also called the county comptroller's office to inform it that 1099s were sent to both homeowners and contractors for the same septic-system job, and to ask if this was "double dipping." Some contractors also said they have experienced months-long delays in getting payments for completed work.

"I've had some of those cases cross my desk. On its face, this seems to be an act of colossal incompetence, especially if two 1099s were issued for the same installation — it's undeniably double taxation," Bob DeLuca of the Group for the East End said on Monday.

"The 1099 should go to whomever receives the check," said Len Marchese, the Southampton Town comptroller, who is an accountant. "Why they would send two for the same job makes no sense to me."

County Legislator Bridget Fleming, who was in the work group that helped design the rebate program, said Mr. Kennedy had been wrong to issue 1099s to homeowners or to suggest the county program was based on unsound tax or legal advice.

"You can't do this kind of program without understanding what the legalities and regulations are, and all of us involved asked those questions. We got those answers upfront and we had a sense of precisely what the legal obligations should be," Ms. Fleming said Monday. She said the legal advice from the county attorney's office "was given in no uncertain terms . . . so the homeowner is not subject to any kind of claim of gross income being increased or any kind of tax obligation under the program."

"The I.R.S. is the ultimate arbiter of this," Ms. Fleming added, "and I fully expect that the I.R.S. will agree."

Although that may turn out to be true, it is no immediate help to the 70 or so homeowners who have already installed new systems using the county grants, nor the 300 who have been approved and are waiting for their systems to be installed.

Mr. Clapp hopes the 1099 flap won't set back the urgent efforts to protect local waterways. "Water is a non-partisan issue," he said. "We really do have a clean water crisis on Long Island. These programs, when combined, really allow people to make a better choice for the environment and themselves."