



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER CO#125628

PAGE 1 OF 6

DATE: 07/18/2017

SUBJECT: **RECEIVE AND FILE THE AUDITOR'S REPORT OF THE CONSTABLE,
PRECINCT 3, TAX SALES**

COMMISSIONERS COURT ACTION REQUESTED:

It is requested that the Commissioners Court receive and file the Auditor's Report of the Constable, Precinct 3, Tax Sales.

BACKGROUND:

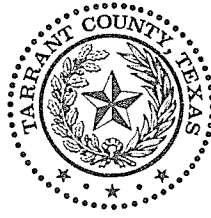
In accordance with Local Government Code, the Auditor's Office reviewed tax sales receipts and disbursements for the period ended September 30, 2016. The objective of the review was to determine whether controls over the receipt and disbursement process of tax sales were adequate.

FISCAL IMPACT:

There is no direct fiscal impact associated with this item.

SUBMITTED BY: Auditor's Office

PREPARED BY: S. Renee Tidwell
APPROVED BY:



TARRANT COUNTY
TARRANT COUNTY ADMINISTRATION BUILDING - ROOM 506
100 E. WEATHERFORD
FORT WORTH, TEXAS 76196-0103
817/884-1205
Fax 817/884-1104

S. RENEE TIDWELL, CPA
COUNTY AUDITOR
rtidwell@tarrantcounty.com

CRAIG MAXWELL
FIRST ASSISTANT COUNTY AUDITOR
cmaxwell@tarrantcounty.com

June 29, 2017

The Honorable Constable Darrell Huffman, Precinct 3
The Honorable District Judges
The Honorable Commissioners Court
Tarrant County, Texas

Re: Auditor's Report – Constable 3 Tax Sales

SUMMARY

In accordance with Local Government Code, we reviewed tax sales receipts and disbursements for the period ended September 30, 2016. The objective of our review was to determine whether controls over the receipt and disbursement process of tax sales were adequate. We observed the following issues that require management's attention.

- Observation 1 Controls over receipts collected should be improved.

- Observation 2 The method used to distribute tax sales proceeds may not always comply with the Texas Property Tax Code.

We discussed our observations and recommendations with the Constable's Office. Attached is the Constable's written response to this report.

BACKGROUND

Constable 3 is responsible for tax sales and writs of execution associated with delinquent taxes on real property. Auctions for tax sales occur on the first Tuesday morning of each month outside the Tarrant County Old Courthouse. Currently, the Constable's Office only accepts cash, cashier's checks, and money orders. The Constable, as the officer conducting the sale, is responsible for distributing the proceeds in accordance with the Tax Code. For the period ended September 30, 2016, the tax sales proceeds totaled approximately \$10 million.

OBSERVATIONS AND RECOMMENDATIONS

Observation 1 Controls over receipts collected should be improved.

Background

Local Government Code 113.022 state that a county office who receives money “*shall*” deposit the money with the *county treasurer* on or before the next business day after the money is received. The statutes also state that if this deadline cannot be met, then money must be deposited no later than the 5th business day after the money is received.

According to the opinion issued by the Criminal District Attorney’s Office #99-OP-107, a public officer is strictly liable for the funds, including any losses and shortages, until the money is deposited with the County Auditor.

Observations

On August 2, 2016, we observed that receipt process on the day of the sale and observed that checks and money orders were not restrictively endorsed upon receipt. According to staff, checks are endorsed when the deposit is prepared at the Southlake office. We also observed receipts related to the constable fees for 10 out of the 11 months were not remitted to the Auditor’s Office by the 5th business day as required by statute. Without adequate controls over receipts, there is no assurance that errors or irregularities will be prevented or detected. According to management, staff indicated that procedures to restrictively endorse all checks and money orders upon receipt had been implemented.

Recommendation

We also recommend procedures be implemented to ensure that deposits are made accordance with the Local Government Code.

Observation 2 The method used to distribute tax sales proceeds may not always comply with the Texas Property Tax Code.

Background

In July 2011, the Constable’s Office began using a Microsoft SQL (.NET SQL) based application for the delinquent tax sales process. This application is not a comprehensive system and will not perform the allocation of proceeds. Currently, the distribution and allocation of the tax sales proceeds is a manual process performed by the Constables Office. Since our last audit, tax sales proceeds have increased from \$3.6 million during fiscal year 2008 to approximately \$10 million during fiscal year 2016.

Texas Property Tax Code Section 34.02(b) prescribes the distribution of tax sales proceeds as follows:

- (1) The costs of advertising the tax sale;
- (2) Any fees ordered by the judgment to be paid to an appointed attorney ad litem;
- (3) The original court costs payable to the clerk of the court;
- (4) The fees and commissions payable to the officer conducting the sale;

- (5) The expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property...;
- (6) The taxes, penalties, interest, and attorneys' fees that are due under the judgement; and
- (7) Any other amount awarded to a taxing unit under the judgment.

Furthermore, the code states each subdivision must be fully paid before any proceeds may be applied to the subsequent subdivision. When sale proceeds *equal or exceed* the total amount due for each subdivision, all costs are paid in full and an allocation of, or sharing of proceeds is not relevant.

Observations

During our review, we observed that the method used to distribute tax sale proceeds may not always comply with the Texas Property Tax Code. If sales proceeds for a property sold at auction is *less* than the total amount due for each subdivision, then the calculation used would not comply with the Texas Property Tax Code. Furthermore, we found that costs included as advertising costs were inconsistent and sometimes differed among tax attorneys. A risk exists that the taxing entities could receive a lower amount owed to them in these situations. In other instances, we observed that abstractor fees were combined with court costs. Abstractor fees have a lower priority than court costs. In these situations, the fees of office remitted by the Constable to the Auditor's Office would be understated.

Recommendations


We recommend that the Constable 1) revise the calculation use to comply with the distribution priority outlined in the Texas Property Tax Code, and 2) Consult with IT to determine whether new functionality can be implemented to the current system to allocate sale proceeds in accordance with statute or whether it would be cost effective to implement a new system.

The Auditor's Office will continue to collaborate with the Constable's Office to ensure that any revised processes or new functionality implemented complies with statute.

CLOSING REMARKS

We appreciate the cooperation of the Constable's Office during our review. Please call me if you have any questions regarding the contents of this report.

Sincerely,

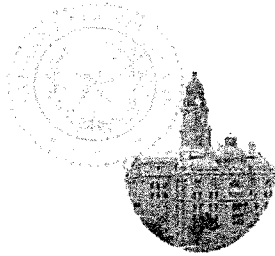


S. Renee Tidwell, CPA
County Auditor

Attachment: Management's response

Distribution: Kent Daulton, Tax Sales
Christopher Nchopa-Ayafor, CIO

Audit Team: Kim Buchanan, Audit Manager
Maki Ogata, Senior Internal Auditor



Tarrant County
Darrell Huffman
CONSTABLE, PCT. 3
SOUTHLAKE GOVERNMENT COMPLEX
1400 MAIN ST., SUITE 240
SOUTHLAKE, TEXAS 76092
PHONE: 817-481-8059
FAX: 817-481-8138

July 10, 2017

The Honorable District Judges
The Honorable Commissioners Court
Tarrant County, Texas

RE: Response to Auditor's Report for Tarrant County Constable Precinct 3 Tax Sales

SUMMARY

In the approximate four and a half years since being elected as the Precinct 3 Constable, this office has sold approximately \$31 million dollars' worth of property. Included in that amount is; \$3.5 million dollars in delinquent taxes owed to Tarrant County, \$7.5 million in taxes owed to Education Districts and entities, \$4.15 million in taxes owed to City Municipalities, \$2 Million in Court Costs, \$685,000 in Constables fees, and deposited over \$12.7 million dollars into the registry of the courts. During this time we have had zero losses or shortages.

Response to Observation 1 – Controls over receipts should be improved.

Our process for selling properties and processing of the subsequent received funds is still very much done through a laborious paper process. Throughout all of the transactions this office has diligently accounted for every dollar placed in our trust. There have been no complaints from taxing entities about receiving their funds rightly owed to them.

~~My staff shows extreme care and due diligence in receiving and depositing money. There have been some minor delays in depositing checks, but those procedures in the office have already been improved, and great care is being taken to make deposit deadlines according to the auditor's recommendations and statute. All checks are now endorsed upon receiving them whether it is in the office or tendered at the monthly sale.~~

Response to Observation 2 – The method used to distribute tax sales proceeds may not always comply with the Texas Property Tax Code.

The current computer system we are using to process the collected funds from the tax sales is out of date and not adequate for all the computations we need it to process. Funds received are divided up into categories that limit the distribution of some funds. This has led to depositing some monies with the District Clerk and disbursement being done there (e.g. court costs). Staff has tried to make adjustments to the software to more accurately distribute funds in accordance

with statute, but due to its limitations that has not been possible. We have gone months at times just trying to get a field added or a decimal point placement changed in the software. There is currently no way to divide out "court costs" and that is one of the items being sent on to the District Clerk. The court costs are not provided to us in a breakdown from the taxing attorneys, so therefore we cannot always determine separate abstract fees, publication costs, etc.

We have been actively working with IT to purchase and implement a new, modern system that will allow for more detailed distribution. This process has proven to be long and laborious on all departments involved. Several projects have started then been handed off to others, and the delays have been frustrating. We are eager to get a new system that will allow for all of the accounting processes that the Auditor's Office would like to see improved or implemented. As of yet, IT has not been able to adapt our current outdated system.

Moving forward with our eyes on a new software system, all relevant procedures should be able to be implemented with exact calculations and disbursement. But to date, no taxing entity has stated or claimed they have not received all of the rightful funds collected on their behalf.

We appreciate the thoroughness of the Auditor's Office and their cooperation throughout this review. We have implemented and made changes accordingly to provide better accountability and transparency to the citizens and departments of Tarrant County.

Sincerely,



Darrell Huffman

Constable, Precinct 3

Tarrant County, Texas

Distribution: S. Renee Tidwell, CPA – County Auditor
Tarrant County Commissioners and Judges
Kim Buchanan – Audit Manager