



Travis County Commissioners Court Agenda Request

Meeting Date: January 17, 2012

Prepared By/Phone Number: Patti Smith/(512) 854-9268

Elected/Appointed Official/Dept. Head: Tina Morton *Jm*

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE: Consider and take appropriate action on request to approve a funds transfer from the Travis County Treasurer to the Office of the Travis County Tax Assessor/collector (Tax Office) for the outstanding balance of uncollectible non-sufficient funds checks received for Motor Vehicle Sales Tax transaction that were not covered by the lawsuit settlement.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Memorandum is attached.

STAFF RECOMMENDATIONS:

See Attached

ISSUES AND OPPORTUNITIES:

See Attached

FISCAL IMPACT AND SOURCE OF FUNDING:

See Attached

REQUIRED AUTHORIZATIONS:

Gary Martin/ (512) 854-9510

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.



County of TRAVIS STATE OF TEXAS

TINA MORTON
ASSESSOR AND COLLECTOR
OF TAXES

5501 Airport Boulevard
AUSTIN, TEXAS 78751
(512) 854-9473

DATE: January 10, 2012

TO: Samuel T. Biscoe, County Judge
Ron Davis, Commissioner, Precinct 1
Sarah Eckhardt, Commissioner, Precinct 2
Karen Huber, Commissioner Precinct 3
Margaret Gomez, Commissioner Precinct 4

FROM: Patti M. Smith, Financial Manager *AMS*

RE: Transfer of funds to cover remaining balance after settlement of lawsuit
pertaining to NON-SUFFICIENT FUNDS checks with the State
Comptroller

Agenda Request: Consider and take appropriate action on request to approve a funds transfer from the Travis County Treasurer to the Office of the Travis County Tax Assessor/Collector (Tax Office) for the outstanding balance of uncollectible NON-SUFFICIENT FUNDS checks received for Motor Vehicle Sales Tax transactions that were not covered by the lawsuit settlement.

Background: Each year since 2000, Audit Findings have shown the balance in NON-SUFFICIENT FUNDS Checks Receivable to be an issue. The significance of this was stated in the Audit Report as follows:

The collectability of NON-SUFFICIENT FUNDS checks and other receivable amounts diminishes with time. NON-SUFFICIENT FUNDS checks that have been outstanding for more than one year are most likely not collectible. Collection of these NON-SUFFICIENT FUNDS checks helps to ensure more accurate financial statement reporting.

Therefore, in October 2005, the Tax Office requested that the State Comptroller give a fund adjustment (reimbursement) to the Tax Office for the uncollectible amounts resulting from numerous NON-SUFFICIENT FUNDS checks received in the past. Since the Tax Office was acting merely as a collection agent for the State Comptroller, the Tax Office felt the State Comptroller should bear the burden of these uncollectible items.

These checks were the result of Sales Tax transactions from the purchase and sale of motor vehicles. All of these transactions that occur in Travis County must ultimately go through the Tax Assessor Collector's office. The checks are deposited into a designated bank account of the Tax Assessor Collector, and then funds are sent to the State Comptroller, via ACH (Automated Clearing House) transfer. If any checks are returned to the Tax Office as NON-SUFFICIENT FUNDS, it is up to the Tax Office to collect them.

The above mentioned request was denied on December 29, 2005 by the State Comptroller. Accordingly, Gary Martin with the County Attorney's Office, at the request of the Tax Office, requested a Redetermination Hearing under the Comptroller's rules. This request resulted in a Position Letter from the Comptroller's Assistant General Counsel for Administrative Hearings, dated August 24, 2006, denying about two-thirds of the Tax Office's claim.

In concurrence with the County Attorney's advice, the Tax Office rejected the Comptroller's position and on September 8, 2006 requested a formal hearing. That hearing was held on December 1, 2006. On January 10, 2007 the Administrative Law Judge issued his Proposed Comptroller's Decision basically upholding the Position Letter. As provided by the Comptroller's Rules, the County Attorney filed exceptions to the decision, which was disposed of (denied) on February 16, 2007. The final Comptroller's Decision was signed on May 20, 2008. A Motion for Rehearing was denied on August 21st, 2008.

The County Attorney met with the Commissioners' court on September 16, 2008 and it was determined to file a lawsuit in the Travis County District Courts seeking a Declaratory Judgment in favor of the Tax Assessor-Collector. The lawsuit was filed on November 3, 2008.

On November 21, 2011 a settlement was reached. The total amount of the settlement was \$15,447.26, leaving an outstanding balance from the lawsuit of \$10,658.72. The Tax Office received the check from the State Comptroller on November 28, 2011.

Since the lawsuit was filed, there have been a few collections on these NON-SUFFICIENT FUNDS checks in the amount of \$380.99. Also, Travis County Risk Management was able to cover the NON-SUFFICIENT FUNDS items which fell under their fraud policy in the amount of \$145.50. This leaves a remaining balance on lawsuit amount of \$10,132.23.

Summary: In prior years, the Tax Office has not had an effective way to track down each NON-SUFFICIENT FUNDS check writer so that these funds could be collected. As a result, a balance of \$26,105.98 was outstanding at the time of the lawsuit.

During this entire time, the Tax Office has been "floating" the State Comptroller and the County these funds. This is due to the fact that the Tax Office made the appropriate

transfer of funds to the Comptroller and the County when the original transactions were made. These transfers of funds were made in good faith that the checks were good.

Currently, almost all NON-SUFFICIENT FUNDS checks for Motor Vehicle transactions are recovered by taking credit against amounts submitted to the State Comptroller. Any additional outstanding amounts are a part of the cost to the County of processing these Motor Vehicle transactions and should be written off or expensed.

As provided by TRC 502.109 of the Texas Traffic Laws, the Tax Office receives an amount per registration (\$1.90) from the State of Texas for processing the paperwork. This contributes \$2,200,000.00 to the General Fund. As provided by TRC 501.138, the Tax Office receives \$5.00 for each certificate of Title issued. This contributes \$1,030,000.00 to the General Fund. These two amounts combined generate a total of \$3,230,000.00 annually for the General Fund.

By Commissioners' Court approving a funds transfer from the County Treasurer to the Tax Office to offset the uncollectible amounts, the County Auditors will no longer be able to take issue with this item under the "Findings" section of the annual audit and the Tax Office would then have more accurate financial statement reporting.

If any funds are subsequently collected after being written off, these funds will be returned to the Travis County Treasurer.

Staff Recommendation: The Tax Office recommends approval by the Commissioners' Court for a one-time funds transfer from the County Treasurer to the Tax Office in the amount of \$10,132.23 for the write-off of the remaining balance of uncollectible items included in the lawsuit.

Attachments:

1. Risk Management documentation.
2. Lawsuit documentation.
3. Findings from the audit by the County Auditors for the FY 2011 audit.
(See Attachment B, item #1.)



Travis County Loss Notice and Supervisor's Accident/Incident Report

Please PRINT LEGIBLY!

GENERAL INFORMATION		Complete all blocks for every loss.	
1. Department Name: Tax Office		Personnel Liaison or Supervisor 3. Contact Person/Title: Patti Smith, Financial Manager	
2. Department Address: 5501 Airport Blvd, Austin, TX 78754		4. Contact Phone Number: (512) 854-9268	
		5. Contact Fax Number: (512) 854-9235	
6. Loss Type: <input type="checkbox"/> Vehicle/Equipment <input type="checkbox"/> Property Loss/Damage <input type="checkbox"/> Injury <input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> On Duty <input type="checkbox"/> Off Duty	
7. Date of Occurrence M M D D Y Y		8. Time of Occurrence <input type="checkbox"/> AM <input type="checkbox"/> PM	9. Loss Occurred <input checked="" type="checkbox"/> Indoors <input type="checkbox"/> Outdoors
11. Location of Accident/Incident: 5501 Airport Blvd and satellite offices		10. On Travis County Premises <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
EMPLOYEE OR INJURED 3 RD PARTY INFORMATION		Complete all blocks. N/A	
12. <input type="checkbox"/> Employee OR Injured 3 rd Party <input type="checkbox"/> Operator of Equipment/Vehicle		13. Social Security or Identification Number	
14. Last Name		15. First Name	16. Middle Name/Initial
17. Occupation:		18. Severity of Injury <input type="checkbox"/> Death <input type="checkbox"/> Disabling <input type="checkbox"/> First Aid <input type="checkbox"/> No Injury <input type="checkbox"/> Hospitalization <input type="checkbox"/> Serious	
19. Age:	20. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	21. Length of Present Employment:	Year(s) Month(s)
LOSS OR DAMAGE TO PROPERTY OR 3 RD PARTY GENERAL LIABILITY		Complete all blocks when there is property loss or damage.	
22. Type of Loss <input type="checkbox"/> Fire <input type="checkbox"/> Wind <input type="checkbox"/> Explosion <input checked="" type="checkbox"/> Other (describe) <input type="checkbox"/> Slip & Fall <input type="checkbox"/> Theft <input type="checkbox"/> Lost <input type="checkbox"/> Floods <input type="checkbox"/> Date reported to Law Enf.		23. Estimated Dollar Value of Loss or Damage: \$1,008.69	
24. Description of Property and Damages: Loss due to checks being written to the Tax Office for Motor Vehicle transactions on closed or fictitious bank accounts.			
25. Description of Injuries:			
LOSS OR DAMAGE TO VEHICLE(S) OR HEAVY EQUIPMENT		Complete all blocks for each vehicle when the loss involves a vehicle or motorized equipment.	
COUNTY VEHICLE/EQUIPMENT 1		OTHER VEHICLE/EQUIPMENT 2	
26. Vehicle 1 Type <input type="checkbox"/> Car <input type="checkbox"/> Bus/Van <input type="checkbox"/> Heavy Equipment <input type="checkbox"/> Motorcycle <input type="checkbox"/> Truck <1 Ton <input type="checkbox"/> Fork Lift <input type="checkbox"/> Truck ≥ 1 Ton <input type="checkbox"/> Other		27. Vehicle 2 Type <input type="checkbox"/> Car <input type="checkbox"/> Bus/Van <input type="checkbox"/> Heavy Equipment <input type="checkbox"/> Motorcycle <input type="checkbox"/> Truck <1 Ton <input type="checkbox"/> Fork Lift <input type="checkbox"/> Truck ≥ 1 Ton <input type="checkbox"/> Other	
28. Vehicle Owners Name and Address:		29. Vehicle Owners Name and Address	
30. Year/Make/Model/UNIT #:		31. Year/Make/Model/UNIT #:	
32. License Plate Number/State:	33. Vehicle Identification Number:	34. License Plate Number/State:	35. Vehicle Identification Number:
36. Operators Name and Address, or check here <input type="checkbox"/> if same as owner:		37. Operators Name and Address, or check here <input type="checkbox"/> if same as owner:	
38. Operators Drivers License/State:		39. Operators Drivers License/State/Insurance Company & Policy #:	
40. Description of Damage:		41. Description of Damage:	

ACCIDENT/INCIDENT DETAILS*Complete all blocks. Use additional paper if necessary.*

42. Description of what happened. Describe the events leading up to the loss, the activity in progress at the time of the loss. Identify the tools, equipment or handling material and tell how they were being used. Identify and describe events in the order they happened. End with the nature and extent of injury/damage.

Checks were written for Motor Vehicle Transactions and have been returned by the bank due to checks being written on closed or fictitious accounts. When the checks were returned due to the accounts being closed, the Tax Office received some credit from the State for the bad checks. Only the outstanding balance of the checks, after receiving some credit from the state, makes up this claim. (See spreadsheet attached.)

43. Describe the environmental or weather conditions prior to the loss and/or at the time of the loss.

N/A

44. Describe any unsafe actions prior to the loss and/or at the time of the loss, or check here ☒ for none.

45. Describe any other conditions that contributed to this loss or check here ☒ for none.

46. Identify the personal protective equipment required at the time of the loss, or check here ☒ for none.

☐ Seat Belts ☐ Signage & Type: _____ ☐ Other: _____

Was the equipment in use at the time of the loss? ☐ YES ☐ NO. If NO, then circle the required equipment checked above that was not in use.

47. Identify and describe any contributing causes of the loss.

Unable to recoup losses from the individuals who wrote the checks.

48. Identify any Corrective Actions taken to minimize damage/injury or prevent reoccurrence.

New policies and procedures are in place to prevent losses like these. More identifying information is obtained from the check writers and action is taken more quickly with the state so that full credit can be received.

49. Date and nature of scheduled training to implement corrective action.

Where there any conditions you observed that influenced the loss (weather, time of day, equipment malfunctions)?

How did people you observe influence the loss?

What do you think caused the loss?

Do you have any additional comments or observations

EMPLOYEE -WITNESS SIGNATURE

Please sign here and indicate the date and time.

Your Signature

Date and Time
May 27, 2011 12:40 PM

TRAVIS COUNTY TAX OFFICE
Uncollectible Checks Other Than NSF
Dates Through February 2011

BANK DATE	Check Date	Check No.	First Name	Last Name	Check Amount	Total Credit Amount	Date Customer Paid	Date Credit Taken	Txdot Credit Amount	Lic plt/stk	Sales Tax Credit Amount	Outstanding Balance	Account Closed	Altered/Fictitious
100421	100415	288	Monica E.	Acosta	82.25	57.25		100518	\$ 51.00	14959C	\$ 6.25	25.00	x	
071221	071213	1330		America's Best Ins. A	64.30	54.30		080109	\$ 54.30	BWV981		10.00	x	
071227	071220	1331		America's Best Ins. A	64.30	54.30		080109	\$ 54.30	J47DVC		10.00	x	
091013	091007	1012	Omar	Artis	60.30	54.30		091021	\$ 54.30	PTS798		6.00	x	
061124	061117	1051	Janelle M.	Baines	64.30	54.30		061211	\$ 54.30	G19MRN		10.00	x	
071106	071030	506	Ms Pekeetia	Barbour	100.30	64.30		071128	\$ 64.30	BWY794		36.00	x	
080703	080627	1256	Julie A.	Brewer / Matthew W. Manning	76.48	70.48		080718	\$ 70.48	13NFW7		6.00	x	
081121	081114	575	Marilyn L.	Burross	323.25	186.05		081218	\$ 67.30	706RFY	\$ 118.75	137.20	x	
070307	070301	608	Lupe R.	Cadena	60.00	54.30		070330	\$ 54.30	L55PKF		5.70	x	
100512	100507	650	Lupe R.	Cadena	241.05	206.05		100528	\$ 67.30	GXB360	\$ 138.75	35.00	x	
100122	100114	1084	Michael	Camacho	64.30	54.30		100211	\$ 54.30	NJS694		10.00	x	
060421	060415	216	Maria C.	Castano	64.30	54.30		060531	\$ 54.30	117LCF		10.00	x	
060517	060511	213	Maria C.	Castano	80.60	60.60		060531	\$ 60.60	583MCR		20.00	x	
071119	071113	317	Graciela V.	Castro	186.05	166.05		071128	\$ 67.30	N07MMT	\$ 98.75	20.00	x	
070426	070420	3470		Collision Specialist	164.60	154.60		070530	\$ 72.10	494FPR	\$ 82.50	10.00	x	
090814	090805	1056		D & J Remodeling	153.55	133.55		090820	\$ 67.30	291PPX	\$ 66.25	20.00	x	
090211	090205	1073	Bobie J.	Fresch	197.30	162.30		090226	\$ 67.30	LKG640	\$ 95.00	35.00	x	
080211	080204	618	Jason W.	Fulton / Louise Larson	188.70	168.70		080229	\$ 168.70	D5JRN,458HDX		20.00	x	
071218	071211	1731	Debra K.	Garrison	245.50	225.50		080130	\$ 15.50	654HDX	\$ 210.00	20.00	x	
100712	100706	1007	Jose A.	Gaspar	306.54	287.04		100728	\$ 142.04	AR83709	\$ 145.00	19.50	x	
081015	081008	164	Lakesha M.	Gilkey	171.30	157.30		081021	\$ 137.30	LGP088	\$ 20.00	14.00	x	
030116	030109	1126	Stephanie K.	Hardin	111.65	93.15		030123		VLZ18S		18.50	x	
061109	061102	1347	Rozina	Khan	115.80	99.80		061211	\$ 69.80	435PPT	\$ 30.00	16.00	x	
070905	070829	1359	Samuel E.	King, Jr.	67.24	61.24		070926	\$ 61.24	6PTX61		6.00	x	
041208	041202	2545	Juan	Lozano	192.90	162.90		041229	\$ 162.90	N69SVK,H25CWG,514BKX		30.00	x	
091209	091203	1049	Melinda	Medina	57.30	54.30		091217	\$ 54.30	MNR628		3.00	x	
090707	090701	1042	Ebony M.	Moore	57.30	54.30		090717	\$ 54.30	NXY269		3.00	x	
050304	050228	723	Craig	Morris	293.30	277.30		050323	\$ 69.80	T68MKD	\$ 207.50	16.00	x	
080430	080430	771	Samantha Ch	Munoz	253.59	97.30		080520	\$ 67.30	FRG916	\$ 30.00	156.29	x	
091117	091110	1076		NT Auto Body & Frame	430.43	418.43		091120	155.30	BJ9S612	263.13	12.00	x	
080711	080703	511	Remolques	Olivas	63.70	47.70		080718	\$ 47.70	292PSZ		16.00	x	
090211	090207	1071	Geneva	Perez	60.30	54.30		090226	\$ 54.30	656PPT		6.00	x	
100812	100806	1136	Zatraya R	Peterson	272.05	253.55		100827	\$ 67.30	BY7N536	\$ 186.25	18.50	x	
090720	090713	138	Michael J.	Richardson	196.05	146.05		090724	\$ 67.30	BC6M129	\$ 78.75	50.00	x	
100506	100503	001023	Maryellen	Robledo	16.30	6.30		100528	\$ 6.30	PNB419		10.00	x	
100513	100410	149	Edward	Rodriguez	147.30	127.30		100528	\$ 67.30	BV5T763	\$ 60.00	20.00	x	
090309	090303	1059	Zach	Schneider	355.30	339.30		090327	\$ 19.30	JLW447	\$ 320.00	16.00	x	
101207	101202	99738	Pishanthi Adle	Shirrazzi	180.90	162.90		101229	\$ 162.90	BWZ366,311SGJ,935VBK		18.00		x
060627	060621	1028	Kimberly L.	Sims	64.30	54.30		060731	\$ 64.30	624BLT		10.00	x	
080107	071231	1035	Kimber L.	Sims	82.30	72.30		080130	\$ 72.30	967PKV		10.00	x	
101217	101214	1061	Dorothy Thor	T & D Design	67.30	64.30		110120	\$ 64.30	NJP723		3.00	x	
091223	091218	1134	Marcelo	Torres	61.00	51.00		091230	\$ 51.00	84ZPRS		10.00	x	
010613	010601	1409	enrique r	Vasquez, jr	166.30	85.30	051029					81.00	x	
Total												1,008.69		
Checks that were included in the lawsuit against the State Comptroller, total \$145.50.														

SETTLEMENT OUTLINE

Date: September 13, 2011

Subject: *Nelda Wells Spears, Tax Assessor and Collector*

vs.

Susan Combs, Texas Comptroller of Public Accounts

- An administrative appeal of the Comptroller's decision denying reimbursement to the tax office for the amounts of checks received for payment of Motor Vehicle Sales Taxes. These checks were denied payment by the banks due to insufficient funds (NSF checks) but the amounts of the checks had already been remitted by the tax office to the State. The tax office attempted collection on these checks but was not reimbursed by the State.
- After an administrative hearing the Comptroller decided that the amounts claimed on NSF checks received prior to October 18, 2005 (\$21,441.31) were denied as barred by a 4 year statute of limitations.
- Claims on the amounts of NSF checks received after the October 18, 2005 (\$4,726.60) were granted.

Settlement: Payment to Travis County:

- Original claim: \$26,105.98
- Claim granted (post 10/15/2005 checks): - \$4,726.60
- Net remaining claim: **\$21,441.31**
- Compromise
 - (a) 50% of the net claim: \$10,720.07, *plus*
 - (b) Claim granted: \$4,726.60
 - (c) Gross settlement payment: **\$15,447.26**

- Settlement Documents:**
1. Compromise and Settlement Agreement
 2. Agreed Judgment

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement ("Agreement") is between Travis County, Texas and Nelda Wells Spears, Travis County Tax Assessor and Collector (Plaintiffs), and Greg Abbott, Attorney General of the State of Texas (Defendant or Attorney General), as Defendant and Susan Combs, Comptroller of Public Accounts of the State of Texas, Defendant (Defendant or Comptroller). Plaintiffs and Defendants are also referred to as the Parties.

RECITALS

1. The Parties intend to compromise and settle all motor vehicle sales and use tax issues for the period of January 1, 1997 through December 31, 2005, including the contested matters in the lawsuit Cause No. D-1-GV-08-002211; *Travis County, Texas and Nelda Wells Spears, Travis County Tax Assessor and Collector v. Comptroller, et al.*; in the District Court of Travis County, Texas, 345th Judicial District (the "Lawsuit").
2. The Travis County District Court has jurisdiction over the parties and subject matter of the Lawsuit. Venue is in Travis County. The taxes in issue are motor vehicle sales and use taxes. The period in issue is January 1, 1997 through December 31, 2005 (the "Period"). Plaintiffs' taxpayer number is 3-01-151-4103-5 in the Comptroller's records.
3. The Parties enter into this agreement solely due to the vagaries of litigation and to buy peace, neither admitting the facts relied on by the other nor conceding the legal positions respectively asserted by them. Neither the execution of this agreement nor any specific provision hereof shall be construed as any admission by either party that the other would have prevailed, in whole or in part, in the Lawsuit.
4. Both Parties wish to dispose of the entire controversy and dispute for the Period between them, including all claims and causes of action of any kind that currently exist or that may exist in the future that relate in any way to Plaintiffs' motor vehicle sales and use tax liability for the Period. The Parties recognize that there may be claims or injuries arising out of the transactions or occurrences described in this agreement that are unknown to the Parties at the time of execution of this agreement or that may arise in the future. However, the Parties have negotiated this agreement in full knowledge of the possibility of additional claims or injuries, and intend

this agreement to settle and finally dispose of all such claims or injuries arising out of the described transaction or occurrence, whether known or unknown.

5. Defendants genuinely dispute the legal and factual basis for Plaintiffs' claims for a refund of motor vehicle sales and use taxes, penalty, and interest. Plaintiffs genuinely dispute the legal and factual basis of Defendants' defenses.

6. The Parties deny all liability other than as stated in this Agreement.

TERMS OF THE AGREEMENT

7. Based upon consideration of the reciprocal settlement and release of all claims regarding the taxes in issue, the Parties make this Compromise and Settlement Agreement ("Agreement").

Signed Counterparts

8. This Agreement will be signed in two (2) identical original counterparts that will each be considered an original for all purposes. Plaintiffs will retain one original counterpart and the Comptroller will retain the other.

Agreed Judgment

9. The Parties agree to and incorporate the form of the Agreed Judgment attached as Exhibit 1.

10. The Parties will sign the Agreed Judgment and Plaintiffs will submit it for approval and signing by a district judge in the Travis County District Court, after which Plaintiffs will promptly deliver a copy of the signed and file-marked Agreed Judgment to the Defendants.

Payment, Refund and Warrants

11. The Comptroller will refund to Plaintiffs FIFTEEN THOUSAND FOUR HUNDRED AND FORTY-SEVEN AND 26/100 DOLLARS (\$15,447.26). The Comptroller will issue a warrant in that amount provided that Plaintiffs are not subject to a warrant hold under TEX. GOV'T CODE ANN. § 403.055. The Comptroller will retain the remainder of the amount in controversy for the Period.

12. Within five (5) business days after receipt of the warrant, Plaintiffs shall present the Agreed Judgment to the Court for signature.
13. The Parties will pay their own attorneys' fees and court costs.
14. The Comptroller will mail the warrant, payable to Plaintiffs by First Class United States mail as follows:

Gary D. Martin
Assistant Travis County Attorney
314 West 11th St.
Granger Building, Suite 420
Austin, TX 78767

Releases

15. The Parties acknowledge that they may have other, currently unknown claims regarding Plaintiffs' motor vehicle sales and use tax liability for the Period, but intend this Agreement to dispose of the Lawsuit as well as any other known or unknown claims relating to Plaintiffs' motor vehicle sales and use tax liability for the Period.
16. Plaintiffs acknowledging receipt of good and valuable consideration, release and discharge the Defendants, their predecessors, successors, assignees, employees, agents, and attorneys from all claims, suits, and causes of action related to its motor vehicle sales and use tax liability for the Period, except that Plaintiffs reserve the right to sue for specific performance of this Agreement.
17. Defendants, acknowledging receipt of good and valuable consideration, release and discharge Plaintiffs, their predecessors, successors, assignees, employees, agents, and attorneys from all claims, suits, and causes of action related to Plaintiffs' motor vehicle sales and use tax liability for the Period, except that Defendants reserve the right to sue for specific performance of this Agreement or for overpayments made through mistakes in performing this Agreement.
18. The Parties exchanged consideration in order to compromise genuinely disputed claims and to avoid litigation risks. Their consideration is contractual and not a mere recital.

Final Agreement; Not Precedential

19. This Agreement, including Exhibit 1, contains the entire final agreement between the Parties. This Agreement supersedes any and all prior agreements between the Parties on all subjects in any way related to Plaintiffs' motor vehicle sales and use tax liability for the Period. No agreements inconsistent with the terms of this Agreement exist. This Agreement can be amended only in a written amendment signed by all Parties. This Agreement cannot be unilaterally or bilaterally modified. This Agreement cannot be orally modified.

20. This Agreement concerns only Plaintiffs' motor vehicle sales and use tax liability for the Period and has no precedential or other effect on any other claims that have accrued, or may accrue, or any other causes of action that have arisen, or may arise, between the Parties.

Unassignability

21. This contract shall not be assignable by Plaintiffs or their successors.

Texas Law; Venue; Attorney's Fees

22. This Agreement is made according to Texas law, and shall be construed and enforced according to Texas law. Venue for any dispute regarding this Agreement will be exclusively in the district courts of Travis County, Texas. If litigation is required to perform the terms of this Agreement, or in the event of a breach of any material term hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees from the other party.

Confidentiality

23. This Agreement is confidential except when confidentiality would violate any court order, constitutional provision, or statute prohibiting such confidentiality, including, but not limited to, the Texas Public Information Act.

Effective Date

24. This Agreement will be effective on the date it has been signed by all Parties.

Travis County, Texas and Nelda Wells Spears,
Travis County Tax Assessor and Collector

By: _____

Printed Name: _____

Title: _____

Date: _____

Greg Abbott, Attorney General of the State of
Texas, Defendant, and on behalf of Susan Combs,
as successor to Susan Combs, Comptroller of Public
Accounts of the State of Texas

By: _____

Title: _____

Date: _____

NO. D-1-GV-08-002211

TRAVIS COUNTY, TEXAS and NELDA
WELLS SPEARS, TRAVIS COUNTY
TAX ASSESSOR AND COLLECTOR,
PLAINTIFFS

v.

SUSAN COMBS, TEXAS
COMPTROLLER OF PUBLIC
ACCOUNTS, and GREG ABBOTT,
TEXAS ATTORNEY GENERAL,
DEFENDANTS

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345TH JUDICIAL DISTRICT

AGREED JUDGMENT

Plaintiffs, Travis County, Texas and Nelda Wells Spears, Travis County Tax Assessor and Collector, and Defendants, Susan Combs, Comptroller of Public Accounts of the State of Texas, and Greg Abbott, Attorney General of the State of Texas, appeared through their attorneys of record and announced to the Court that they have resolved the disputed issues in this lawsuit. The parties request the Court to enter this Agreed Judgment. The parties stipulate and the Court finds as follows:

1. This is a tax refund suit contesting the assessment and payment of motor vehicle sales and use taxes, and brought under chapter 112 of the Texas Tax Code.
2. The tax periods in issue are January 1, 1997 through December 31, 2005.
4. Venue is in Travis County, Texas.

5. This Court has jurisdiction of the parties and the subject matter under chapter 112 of the Texas Tax Code.
6. All motor vehicle sales and use tax claims by Plaintiff against Defendants that relate to the Lawsuit are compromised and settled.
7. Plaintiff requests that this lawsuit be dismissed with prejudice to refiling any claim asserted in this lawsuit.

RELIEF GRANTED

8. It is ORDERED that this lawsuit by Plaintiff, Travis County, Texas and Nelda Wells Spears, Travis County Tax Assessor and Collector, against Defendants, Susan Combs, Comptroller of Public Accounts of the State of Texas, and Greg Abbott, Attorney General of the State of Texas, is dismissed with prejudice to refiling any claim asserted in this lawsuit.
9. Costs of court are adjudged against the party who incurred them.
10. This Agreed Judgment disposes of all parties, claims, and issues in this lawsuit.
11. All relief not expressly granted is denied.

Signed on _____, 2011.

Judge Presiding

Agreed as to form and substance and entry requested:

Digitally signed by Gary Duncan Martin
DN: cn=Gary Duncan Martin, o=Travis County Attorney's Office,
ou=Civil Division, email=gary.martin@co.travis.tx.us, c=US
Date: 2011.09.13 15:42:13 -05'00'

GARY DUNCAN MARTIN
State Bar No. 24015072

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ATTORNEY FOR DEFENDANTS

**Tax Office
Report of Findings and Recommendations
11-14**

**Report Date: October 31, 2011
Issue Date: December 9, 2011**

TRAVIS COUNTY
AUDITOR'S OFFICE

SUSAN A. SPATARO, CPA, CMA
COUNTY AUDITOR



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October 31, 2011
Travis County Tax Office
11-14

Report of Findings and Recommendations

Nelda Wells-Spears
Travis County Tax Assessor/Collector

Scheduled as part of our statutory requirements, the Revenue and Internal Controls Auditing Division of the Travis County Auditor's Office has completed an examination of the Travis County Tax Assessor/Collector's Office. We conducted our examination in accordance with applicable statutes governing the County Auditor's Office and those relating to County financial and accounting protocols. As a result of our examination, we are providing this report on our findings and recommendations.

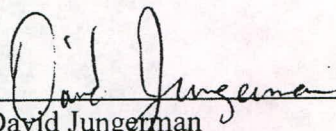
Our examination of this office included an assessment of the adequacy and effectiveness of the overall system of internal controls in place for the Tax Office's accounting system during the period October 1, 2010 to June 30, 2011. This included examinations of controls over handling and managing collections, liabilities, receivables, bank reconciliations and fixed assets. This also included an examination of receipts and deposits to verify compliance with statutes and internal policies and procedures. Our work was based on applying sampling procedures to office records and on verbal and written representations from this office. Sampling relates to examining, on a test basis, evidence supporting the amounts and disclosures in the financial records and statements. The use of sampling techniques would not necessarily disclose all matters in the Tax Office's financial records and internal controls that might be material weaknesses or misstatements. In regards to the written and verbal representations made by this office, unless otherwise noted in this report, office management maintains that the assertions we relied upon in the examination were correct to the best of their knowledge.

Based upon our examination, we gave the system of internal controls for this functional area a rating of "Good." This rating indicates that within the Tax Office, there are well established internal controls with few, if any, minor exceptions. In order for this office's overall internal control environment to function at an optimal level, these selected controls should be improved. See Attachment A for an explanation of our grading system for the overall control environment.

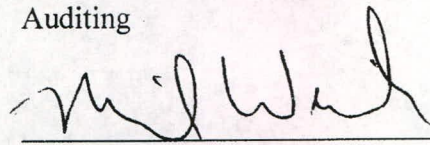
The control weaknesses we noted relate to NSF checks receivable and fine and fee assessment. Details of these issues, our recommendations, and management's responses to these issues can be found in Attachment B. Immediately after the title of each control issue listed in these attachments, we have placed our assessment of the severity of that particular issue in parenthesis. These items are assessed as having "Most Serious," "Serious," or "Less Serious" significance.

A copy of this office's financial statements for June 30, 2011 is provided in Attachment C; the express purpose of presenting these financial statements and the appropriate findings is to comply with applicable local government code statutes and to provide internal control feedback to Travis County officials. This financial statement has not currently been audited by Travis County's external auditors.

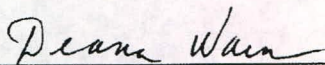
These findings and recommendations are intended solely for the information and use of management and the Commissioners' Court. We greatly appreciate the cooperation and assistance received from the management and staff of the Tax Office during this examination. Please contact our office if you have any questions or concerns regarding this report.



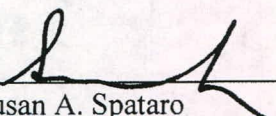
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Karen Huber, Commissioner, Precinct 3
Margaret Gomez, Commissioner, Precinct 4
Leroy Nellis, County Executive, Planning and Budget Office
Dusty Knight, Chief Deputy Tax Assessor – Collector
Patti Smith, Financial Manager, Tax Office
Nicki Riley, County Auditor's Office
Report File

EXECUTIVE SUMMARY

Functional Area:

The Travis County Tax Assessor/Collector's Office is responsible for assessing, recording, tracking, collecting, posting, and disbursing property taxes. In addition, this office tracks, stores and disburses vehicle license plates and tags; they also collect, track, and disburse the fees collected when these tags and plates are issued. Tax Office accounting personnel are responsible for making deposits and disbursements of the funds collected as well as reconciling the office bank accounts and producing the office financial schedules and statements. In addition, the Tax Office voluntarily performs the collection function for criminal fines, fees, and court costs associated with misdemeanor criminal cases assessed by the County Courts at Law; disbursing the collected funds to the applicable parties.

Prior Examination Significant Findings (#10-12, Dated December 20, 2010):

There were no significant findings noted.

Objectives of Current Examination (Period: October 1, 2010 to June 30, 2011):

The scope of this examination included an assessment of receipts and disbursements to verify compliance with statutes and internal policies and procedures. In addition, we evaluated controls over internal functions responsible for assessing court costs, handling and managing collections, refunds, accounts receivable, accounts payable, and fixed assets.

Current Examination – Significant Findings:

There were no significant findings noted.

Overall Opinion (See Transmittal Letter for Specifics):

The system of internal controls in place for this functional area was rated "Good."

Attachment A

Internal Controls Rating Key

Rating Designation	Rating Description
Good	Well established internal controls with few, if any, minor exceptions
Adequate	Overall solid system of internal controls outweighs the relative number of minor or more serious findings
Requires Improvement	Weaknesses exist that negatively impact the overall system of internal controls
Requires Significant Improvement	Significant number of weaknesses that negatively impact the overall system of internal controls
Inadequate	Existing overall system of internal control is ineffective

Note: A good internal control system reduces the risk of errors, defalcations, and misappropriations of funds. Weak internal control systems provide an environment in which errors, defalcations, and misappropriations of funds can go undetected.

ATTACHMENT B

1. NSF Checks Receivable (Less Serious)

As noted in previous examinations, the Tax Office has a significant number of old NSF checks receivable recorded in their Motor Vehicle Hot Checks in Collections account. As of June 30, 2011 there were \$29,347.14 in NSF checks that have been outstanding for more than one year. This balance is made up of \$3,966.90 from the old Mapper system and \$25,380.24 from the RTS system. As indicated in previous examinations, the Tax Office filed a lawsuit seeking to collect these funds from the State Comptroller after exhausting other collection efforts. It should be noted that the current check acceptance procedures adequately require enough personal information about the check writer for subsequent collection. However, previous check acceptance procedures did not require sufficient information; thereby creating the large receivable balance related to NSF checks outstanding for more than one year.

Significance:

The collectability of NSF checks and other receivable amounts diminishes with time. NSF checks that have been outstanding for more than one year are most likely not collectible. Collection of these NSF checks helps to ensure more accurate financial statement reporting.

Recommendation:

We recommend that the Tax Office continue to monitor the progress of the lawsuit against the State Comptroller. If the Tax Office does not prevail, they should seek recollection from other appropriate sources such as the general fund or risk management. In addition, the Tax Office should continue normal recollection practices for NSF checks receivable that are less than one year old.

Management Response:

In October 2005 we requested that the State Comptroller give us a funds adjustment (reimburse us) for the uncollectable amounts. That request was denied on December 29, 2005. Accordingly, the County Attorney, at our request, requested a Redetermination Hearing under the Comptrollers rules. This resulted in a Position Letter from the Comptrollers Assistant General Counsel for Administrative Hearings on August 24, 2006 denying about two-thirds of our claim.

In Concurrence with the County Attorneys advice we rejected the Comptroller's position and on September 8th requested a formal hearing. That hearing was held on December 1, 2006. On January 10, 2007 the Administrative Law Judge issued his Proposed Comptrollers Decision basically upholding the Position Letter. As provided by the Comptrollers Rules the County Attorney filed exceptions to the decision, which were disposed of (denied) on February 16, 2007. The final Comptrollers Decision was signed on May 20, 2008. A Motion for Rehearing was denied on August 21, 2008.

The County Attorney has met with the Commissioners Court on September 16, 2008 and it was determined to file a lawsuit in the Travis County District Courts seeking a Declaratory Judgment in the favor of the Tax Assessor Collector. The lawsuit was filed on November 3, 2008.

On September 13, 2011, the County Attorney met with the Commissioners' Court and the Commissioners approved a settlement with the Texas Comptroller in which Travis County is paid the amount of \$15,447.26 from the original lawsuit of \$26,105.98. This settlement will be used to take care of the oldest outstanding balances first from the old Mapper system and then continue forward chronologically.

A request was also sent to Travis County Risk Management for reimbursement of the remaining balance of the lawsuit not covered by the settlement. Risk Management stated that they could only cover those items which were the direct result of intentional fraud such as checks written on closed accounts or a fraudulent signature. The amount received from Risk Management amounted to \$1,008.69. This was received in August, 2011.

Once the settlement funds are actually received from the State Comptroller, all balances that were not covered by either the settlement or Risk Management, and are dated prior to January 1, 2011, will be taken to Commissioners' Court for resolution from the General Fund.

Effective January 1, 2011, any outstanding NSF balances resulting from title service companies' fees being included the check are billed monthly to the title services. Each title company pays their invoice on a timely basis.

2. Fines and Fees Assessment (Less Serious)

During our examination of the Tax Office, we tested 35 case files for criminal fee assessments totaling \$4,349.40, noting that for case JP21101181 there is a discrepancy between EZ-Justice and CJS. In EZ-Justice the account shows two payments being made: one for \$100 and one for \$232. The \$100 payment was applied to the court costs that were assessed at \$105 (leaving a \$5 balance). The \$232 payment was applied as follows: \$205 to the assessed fine amount of \$305 (leaving a \$100 balance); \$25 applied to a time payment fee (\$0 remaining balance); and a \$2 processing fee. Based on these two payments, the remaining balance should be \$5 for court costs plus \$100 for fine (total of \$105). However on EZ-Justice, the only amount listed as due is the \$100 fine payment. In addition, the court cost assessments and payment amounts from the \$100 payment aren't listed on the "Party Assessment" screen. In CJS, the amounts have been zeroed out with a status code of YZ, indicating the account has been paid in full. But EZ-Justice has the \$100 balance (correct amount should be \$105) and therefore hasn't been paid in full.

Significance:

This difference is significant because EZ-Justice and CJS should be in agreement on when an account is paid in full. In addition, all transactions should be included on the "Party Assessment" screen in EZ-Justice to have a complete audit trail of amounts assessed and amounts paid.

Recommendations:

We recommend that the Tax Office investigate case JP21101181 to determine the correct status of the case and why all the assessment amounts and payments are not showing on the assessment screen in EZ-Justice. If there is still a balance for case JP21101181, CJS should be corrected to show account has not been paid in full (with assessment amounts listed).

Management Response:

We reviewed the noted case and determined that this case was manually entered rather than being receipted through a computer import process. When entered it was discovered that the offense table did not contain the necessary offense that would enable the particular court cost/fees to be added. Therefore, as procedure requires, the clerk entered the entire amount as a fine. Once a new offense is added to the table staff must go back to the particular case and edit the amount due (fine) breaking it into the correct amount of fine and court cost/fees. Staff entered the wrong offense and failed to break out the amount due.

It was later discovered that the wrong offense was entered and was then corrected. However, the clerk failed to split out the amount due into the various court cost/fees. When the disbursement process was run for both of the payments, the program automatically split the fine into the various court cost/fees according to the offense entered into the system at the time the payment was processed. Staff have now reversed both payments and corrected the amount due breaking it into the proper fine, court cost, and fees.

While the total amount was originally assessed correctly, it was not split out correctly. Therefore, when the defendant paid off the case it was truly paid in full. Our office has identified that there are issues balancing between CJS and EZ-Justice. Therefore, during the budget process we were able to obtain a new FTE for the sole purpose of auditing the data between the two systems. This slot became available on October 1st and we are in the process of hiring the new FTE. In addition, we have established a procedure that once a new offense is added, a Tax Specialist III (Lead Person) or Supervisor will review the particular case attached to the new offense for accuracy.

Tax Office
Statement of Fiduciary Assets and Liabilities
Agency Fund
June 30, 2011

Assets

Cash	\$ 1,525,597
Investments	15,411,684
Accounts receivable, net	<u>510,438</u>
Total assets	<u>17,447,719</u>

Liabilities

Due to third parties	10,630,051
Due to other governmental entities	<u>6,817,668</u>
Total liabilities	<u>17,447,719</u>
Net Assets	<u><u>\$ -</u></u>

NOTE: The express purpose of presenting this financial statement and the appropriate findings is to comply with applicable local government code statutes and to provide internal control feedback to Travis County officials. This financial statement has not currently been audited by Travis County's external auditors.