



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER 0

PAGE 1 OF 12

DATE: 12/8/2009

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

COMMISSIONERS COURT ACTION REQUESTED:

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

BACKGROUND:

In accordance with Local Government Code, Subchapter A., Sec. 115.001, Examination of Records, and Sec. 115.002, Examination of Books and Reports, the Auditor's Office reviewed the tax sale process by Tarrant County Precinct 3 Constable as of July 31, 2009. The objective of the review was to determine whether controls over the receipt and disbursement process of tax sales were adequate.

Attached to this report is a written response from the Precinct 3 Constable's Office.

FISCAL IMPACT:

There is no direct fiscal impact associated with this action.

SUBMITTED BY: Auditor's

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

RONALD D. BERTEL, CPA
FIRST ASSISTANT COUNTY AUDITOR
rbertel@tarrantcounty.com

October 15, 2009

The Honorable District Judges
The Honorable Commissioners' Court
The Honorable Zane Hilger, Constable - Precinct 3
Mr. G.K. Maenius, County Administrator
Tarrant County, Texas

RE: Auditor's Report – Constable, Precinct 3 Tax Sales

SUMMARY

In accordance with Local Government Code, Subchapter A, §115.001, *Examination of Records*, and §115.002, *Examination of Books and Reports*, we reviewed the tax sale process by Tarrant County Constable - Precinct 3 (Constable 3) as of July 31, 2009. The objective of our review was to determine whether controls over the receipt and disbursement process of tax sales were adequate. As a result, we found that controls should be improved. Specifically, we observed the following issues that require management's attention:

Observation 1 The system currently used for accounting and reporting tax sale activity is not adequate.

Observation 2 Controls over monies transferred to another office should be improved.

Observation 3 Segregation of duties was not adequate between certain incompatible tasks.

On November 19, 2009, we discussed the observations and recommendations described in this report with appropriate County management. Attached is management's response to this report.

We are currently reviewing this process as it relates to the District Clerk's Office. In addition, we plan to review the process as it relates to the Tax Office in the near future.



BACKGROUND

Constable 3 operates two offices, one in Hurst and the second in Southlake. The Hurst office executes and returns civil process, warrant, summon, and judgment enforcement documents as directed by law officials. During 2000, the Commissioners Court transferred responsibilities relative to tax sales and writs of execution associated with delinquent taxes on real property to Constable 3. The Constable accepted this responsibility with limited resources such as computer systems and staff to implement proper controls such as segregation of duties related to the accounting functions. The Constable, as the officer conducting the sale, is responsible for distributing the proceeds in accordance with Tax Code.

Auctions for tax sales occur on the first Tuesday morning of each month outside the Tarrant County Old Courthouse. The Constable's Office only accepts cash, cashier's checks, and money orders. Each office maintains a separate checking account in order to segregate the tax sale proceeds from other deposits.

The Constable's Office received and processed tax sales proceeds totaling approximately \$3.6 million during fiscal year 2008. As of July 31, 2009, the Constable's Office processed tax sales proceeds totaling approximately \$2.4 million during fiscal year 2009.

OBSERVATIONS AND RECOMMENDATIONS

Observation 1 – The application currently used for accounting and reporting tax sale activity is not adequate.

Background

The Information Technologies (IT) Department has been working on the development and implementation of a tax sale system for over seven years, but it has yet to be completed. An effort is now underway to bring the platform up to current standards and automate some manual tasks. Currently, the Constable's Office uses the Microsoft Works application to create certain paperwork required in the tax sales process. This application is not a comprehensive computerized system whereby prior years historical data can be retrieved including sold, withdrawn, and struck off properties and fees assessed and currently due per property.



Observation

The current application requires significant manual effort to accomplish various tasks. For example, the manual distribution of proceeds received for properties sold can be very complicated when multiple properties are sold in connection with the same tax suit. Although our limited review did not detect any significant errors, an inherent risk for errors exists due to manual nature of the process.

Furthermore, we observed that the amounts of constable and attorney fees shown on the printed Constable's Return form were routinely revised. Although most of the modifications were done using the strike-through method, some were made using white out liquid. The individual who made the changes did not initial and date the change, or indicate why the amounts of the fees were changed. According to management, procedures have been implemented whereby any corrections made to the Constable's Return are struck-through and initialed and dated by the person who made the change.

Recommendations

Since the Constable's Office is currently working with IT for the development and implementation of a new tax sale system, this is an opportunity to automate and simplify the process of distributing tax sale proceeds. Due to the complexity of this process, we recommend that management continue to consult with the District Attorney's Office to ensure that the design of the application distributes tax sale proceeds in accordance with the Tax Code. Furthermore, IT and the Constable's Office should formalize this effort to ensure timely completion and acceptance of the system design. At a minimum, this formalization should include: (1) a clear scope of work, including deadlines, and (2) assigned tasks and responsibilities, along with a completion date.

We also recommend that management establish procedures to improve controls over the data entered onto the Microsoft Works. Specifically, data entry should be reviewed by management or staff independent of the person who entered the data. If changes are still required after the forms are printed, Constable staff should strike-through errors rather than using white out liquid. Furthermore, corrections should be initialed and dated by the person who made the correction. The reason for the change should also be documented.

Observation 2 – Controls over monies transferred to another office should be improved.

In addition to the monies collected from the tax sales, the Southlake Office often receives money that belongs to other offices, such as the Hurst office or another constable office, and subsequently delivers the money to the appropriate office. During our review, we observed that controls over monies transferred to another office should be improved. Specifically:



1. Documentation, such as a log, does not exist to account for monies received and subsequently transferred to another County office.
2. Although deposits were stored in the locked file cabinet within the office, the key was accessible to most employees in the Southlake Office.
3. Monies awaiting delivery to other County offices were kept in an out-going tray located in an area accessible to all employees within the office and the public.

Recommendations

We recommend the following:

1. In order to account for monies received and subsequently transferred to another County office, the Constable's Office should implement procedures to document all monies, including cash, checks, and money orders, transferred to other offices. Specifically, these procedures should provide details such as the date the monies were received, the payers' name, the amounts received, and the destination of the transferred monies.
2. All monies should be secured in a locked safe or drawer with controlled access to a limited number of designated employees.

Observation 3 – Segregation of duties was not adequate between certain incompatible tasks.

Background

Lack of segregation of duties occurs when a few employees are required to perform incompatible duties. Reducing the risk of fraud and errors is the primary objective of segregating incompatible duties. This objective is achieved by disseminating the tasks and associated privileges for a specific business process among multiple users. In situations where it is impossible to separate duties due to the small number of employees, additional controls should be implemented to reduce the risk of fraud and errors.

According to an opinion provided by the District Attorney's Office dated November 9, 1999, "...a public officer is strictly liable to account for and pay over to the county auditor all public money that officer receives...Strict liability means that the officer is responsible to pay collected funds over to the Auditor regardless of the situation." Furthermore, the opinion states that all shortages must be paid by the public officer who collected the fees unless the Commissioners Court votes to indemnify the officer.



Observation

During our review, we observed that the same individual receives, records, and issues receipts, prepares the deposits, and performs the monthly bank reconciliation. Furthermore, management did not review the monthly financial reports, including the bank reconciliations. Due to the lack of segregation of duties and management oversight, unauthorized and erroneous transactions may not be prevented or detected. As a mitigating control, the Constable and his Chief Deputy are the only individuals authorized to sign checks.

Due to a limited number of staff, we understand that it is not always possible to segregate incompatible duties. Therefore, we recommended that an independent review and reconciliation should be performed by an individual who does not perform receipt and disbursement functions. Furthermore, the monthly transaction record, bank reconciliation, and supporting documentation should be thoroughly reviewed management before being sent to the Auditor's Office. Management stated that they had recently begun reviewing such financial information. Beginning in June 2009, we observed that management had signed and dated the financials provided to the Auditor's Office.

No additional recommendation is required.

CLOSING REMARKS

We appreciate the responsiveness and cooperation of the Constable's staff 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 dated November 30, 2009

Distribution:

Delton Thrasher, Chief Deputy Constable
Steve Smith, Chief Information Officer
Kurt Buchert, IT Project Manager
Suzanne McKenzie, Financial Accounting Manager

Team:

Ron Bertel, First Assistant County Auditor
Kim Trussell, Audit Manager
Susan Black, Senior Auditor
Maki Ogata, Internal Auditor



TARRANT COUNTY

ZANE HILGER

CONSTABLE, PCT. 3

TARRANT COUNTY GOVERNMENT COMPLEX

645 GRAPEVINE HIGHWAY

HURST, TEXAS 76054

(817) 581-3610

November 30, 2009

The Honorable District Judges
The Honorable Commissioners' Court
Mr. G.K. Maenius, County Administrator
Tarrant County, Texas

RE: Management Response to the Delinquent Tax Sale Audit of July 2009

Summary

On November 19, 2009 the Constable's Office, Precinct Three met with the Auditor's office to discuss the observations and recommendations of an audit conducted during the summer months. As we understand it, the review was to cover what controls were in place for the receipt and disbursement of funds generated by the tax sales conducted each month for delinquent property taxes. The observations discussed included:

1. The current system used for accounting and reporting all tax sales activities;
2. Controls used for the transfer of monies from one office to another; and
3. Segregation of duties with the current staff.

In the meeting we were able to discuss points in the draft report that we had concerns with. Some of the original observations and recommendations were changed, modified or deleted. The draft report was an accumulation of a large amount of information, numerous visits and meetings with management's staff and that of the Auditor's Office. The observation also included the attendance by the Auditor's Office of a monthly tax sale where properties were auctioned off, monies were collected from the successful bidders and appropriate paperwork was started on each property. Management staff completed hours of research, copying files and documents, and detailed explanations of each phase of the sale of property from beginning to end.

Background

In January, 2000 the Constable's Office, Precinct Three, stepped forward and accepted the responsibility for conducting the Delinquent Tax Sales, formerly the responsibility of the Sheriff's Department. At the time the Sheriff's Department had a staff of five including a manager, a Grade 73 and a clerical staff of 4. No

positions transferred to Precinct Three to conduct the tax sales. The computer program being used at the time was the Microsoft Works program that was created by the Manager over the tax sales. What was in place was a Writ Specialist, a Grade 53, created for the levy and sale of real property countywide for all precincts. This individual was now responsible for the real property sales and those of the delinquent tax sales. By state law, all real property sales must be conducted the first Tuesday of each month on the county courthouse steps between the hours of 10:00am and 4:00pm. At the time management accepted this responsibility the Southlake office was opened and a clerical position was approved by Court. This position was filled by a clerical person formerly employed by the Accounting Section of the Sheriff's Department who had knowledge of the tax sales. This individual was a commissioned reserve deputy constable and did conduct the sales under the supervision of the Writ Specialist. In October 2003 the Constable requested an audit of the tax sale program because of funds found in the checking account set up for the tax sale program in an amount of \$500,000.00. The result of the audit cleared all back monies to the appropriate parties including the Tax Office, the District Clerk, the Auditor's Office, and the law firms representing the taxing authorities. The 2003 audit was the last audit conducted on the tax sale program.

Observation 1

The Microsoft Works program, the 1997 program, is the computer program employed to enter data for the tax sales. The Order of Sale, deeds, and other data are entered and stored in this out of date program. This system will only allow one employee to enter data into it at a time even though it is loaded onto two separate computers. This slows the progress of entering data simultaneously by both employees. The system will not allow data stored from previous years to be retrieved without the assistance of the IT support person as it will lock up the system so no one may utilize it. All of the support documents, deeds and other legal documents are produced from this current system. Management is currently in the process of working with IT, the Tax Office and other departments to develop a new system that will encompass all aspects of the tax sales. A charter has been approved and the design phase is ongoing. There was a delay by the Auditor's office in developing a policy statement. Currently there are numerous reports generated off of Excel by the secretary in Southlake that are distributed to the Tax Office, the Auditor, the District Clerk, the Registry of the Court and the law firms representing the taxing authorities. This is a time consuming task that will be built into the new system so that all of the data stored in the program can be downloaded and sent by email and or hard copies to all of the above mentioned entities. The only instance where proceeds are manually calculated are in situations where the property has sold for the less than the taxes owing and therefore the monies must be pro rated. This Excel program does the calculations once the data is entered. It was developed by IT.

The only inherent risk that management sees is typing errors and not the calculation of proceeds due to each. When the audit was being conducted, the observation was made that errors were being corrected by using white-out and not a strike through. As of July, all corrections are being corrected with a single strike through, initialing and dating.

Recommendations

Currently management is in contact with IT on a regular basis with updates on how the design phase of the new system is going. Management was not notified recently that the progress was on hold while the Auditor's office was inputting to IT their concerns on accounting principles currently being used with the tax sale. Management is of the understanding that the distribution of proceeds according the Tax Code currently being used by the law firms and this department are the proper procedure to employ as advised by the District Attorney's office and all law firms representing the taxing entities. Presently, our department receives email copies of the Orders of Sale from each law firm which are then entered into the 1997 program. Next, hard copies of the same Orders of Sale come in from the District Clerk's office. They are then checked by staff for any changes made by the District Clerk's office, they are then printed out for the purpose of checking for errors by the supervisor to ensure that the hard copy information matches the data entered on the 1997 system. Once the supervisor reviews the copies for errors, they are then emailed to the law firms to check again to ensure that all the information is correct and current. After this process has been completed the sale notices can then be forwarded to the Commercial Recorder for publication. So in fact the information entered on each sale notice is checked on three occasions before publication to ensure accuracy. Management believes that the current procedure answers the concern of the Auditor's recommendation that a separate staff member review all entered information. The current staff members accomplish multiple tasks associated with the tax sale and management does not presently have additional staff members to conduct the recommendation of the Auditor's office.

Observation 2

At the time of the audit, monies brought into the Southlake office was in fact placed into a file cabinet and kept there until it was transferred to the Hurst office. There was no log kept to account for the money other than a temporary receipt that would have been issued to the person who produced the money for service of process or for satisfaction of a judgment. The money was then transferred to the Hurst office by one of the deputies where the secretary in Hurst would enter the money into the computer system and generate a permanent receipt to the party concerned. The keys to the file cabinet in Southlake were kept in an open desk draw accessible to anyone who came by that work station. This has since been corrected by having the keys removed from public view and the money is not kept in the in/out tray on the front counter. The money in question is only for

process that was delivered to the Southlake office rather than the Hurst office as a convenience to the plaintiff or it was money left to satisfy a judgment being collected by a deputy stationed in the Southlake office. Receipts for the money were issued so the money could be tracked to the proper case. This is not a daily occurrence but it does happen from time to time.

Recommendation

The recommendations of the Auditor's office include details as to who, what, when and where all monies came in and were transferred be included in any transfer of money from one office to the other and that all money should be secured in a locked safe or drawer with limited access. Management has instituted new procedures to ensure that any money brought to the Southlake office for transfer to the Hurst office is being kept safe and transferred in such a manner as to limit or eliminate the possibility of money being lost during transfer. A lock box was purchased that will be bolted to the drawer of the filing cabinet at the secretary's work station. Two money bags were also purchased with a secretaries in each office being in possession of the keys that unlock the money bags. The keys will be locked in a secured file cabinet at the work stations of the two secretaries only with a back up key for the file cabinets stored in a secured area of each office. The money will be placed into the locked money bag at one office with the temporary receipt which will have the name of the party that presented the money, the cause number of the case at hand and the amount of money presented, whether it was cash, check or money order. The recommendation of the Auditor's office for a list to be signed by the deputy who makes the transfer between offices and signs for the money picked up and delivered at each office is under consideration by management.

Observation 3

In the Auditor's description of segregation of duties not being adequate between certain incompatible tasks, they state that this occurs when a few employees are required to perform incompatible duties. They state that to help to ensure the reduction in the risk of fraud and errors being made, segregation of duties is paramount. The objective of segregating responsibilities is to prevent the potential of fraud or errors made. This is achieved by disseminating tasks and privileges associated with these tasks. Management understands that in a perfect world this practice is optimal, but in this situation the segregation of duties is not a practice that can be afforded. Currently the department has a staff of three to conduct the tax sale from start to finish. Each employee is responsible for multiple tasks throughout the sale process. Whether it is entering data, receiving funds at the sale, processing legal documents so they can be filed by the law firms, or disbursing funds generated from the auction to all entitled to the funds must be accomplished with this staff of three, which includes a supervisor, a Grade 54, a secretary and a clerk. Ultimately, the Constable is responsible

overall for the tax sale by law and this staff is responsible for the day to day performance of all aspects of the tax sale.

The Auditor included in the audit an opinion from the District Attorney's Office dated November 9, 1999, that states that the public officer, the Constable, is strictly liable to account for and pay over to the county all public money that the officer receives. It further states that all shortages must be paid by the public officer who collected the fees unless the Court votes to indemnify the officer. Management believes that Constable Hilger has proven that this opinion is of the utmost importance to him and how the tax sale is conducted by his staff. Again, in 2003, the Constable discovered that money in the amount of \$500,000.00 was still in the checking account set up for the tax sale. The Constable immediately called for an audit of all sales and fees collected to ensure that all money was disbursed to the appropriate law firm or taxing entity.

Observation

The observations here have been addressed because of concerns expressed during the audit itself. Based on a request by the Auditor's Office the secretaries now prepare a monthly report showing the total amount of money taken in that month and the amount of money disbursed for that month showing a zero balance. This report is reviewed and checked based on the information on the report and signed by management as of June, 2009. The Constable and the Chief Deputy are the only signatures allowed on any check issued by the department. With the limited number of staff associated with the tax sale, segregation of duties is not entirely possible. Management is open to recommendations from the Auditor's Office or the District Attorney's Office in how to separate responsibilities as much as is possible with the staff currently in place. It appears that during the meeting with the Auditor's Office on the proposed draft report that concerns expressed earlier had been addressed appropriately to satisfy the recommendations of the audit.

Closing Remarks

The Constable's Office appreciates the time and energy put into this audit by both this office and the Auditor's Office. Any recommendations presented for review have been and will continue to be considered by management in an attempt to promptly improve the current system. With the IT Department assistance, a completely new system will soon be put into place to ensure the accuracy of information entered into the program, the correct disbursement of proceeds generated by the tax sale and that a correct deed be filed through the county for property sold at auction. If management or staff can be of any further assistance in this matter, please contact us immediately and we will do our best to continue the cooperation between all departments associated with the tax sale.

Sincerely,



Zane Hilger
Constable, Precinct Three