



To: Angela Kerby  
From: Karen Blake  
Melissa Ashburn  
Date: 5/29/2014  
Re: **Overpayment of fines, taxes and costs**

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You have asked what the procedure should be whenever a municipal court receives an overpayment of the amount due to a municipal court. Put simply, an effort should be made to return the overpayment in a reasonable manner, regardless of the amount overpaid.

Your policy should address this procedure and though no one statute speaks clearly to this issue, after reviewing the statutes, caselaw (mostly old, involving property taxes) and having discussions with Billy Trout at the Department of Revenue, it is our recommendation that 1) an attempt to contact the defendant be made under the due diligence standards set forth by the state (below) and 2) if the attempt fails that the city should follow the abandonment property statute specific to courts.

First, we know “the allocation formula for moneys paid into court: the first moneys paid in any case shall first be credited toward payment of litigation taxes and once litigation taxes have been paid, the next moneys shall be credited toward payment of costs; then additional moneys shall be credited toward payment of the fine. T.C.A. § 40-24-105. The question is what to do with the remainder.

The statute requires a court to hold the owner’s overpayment for a year from the date it has been paid, then it would be deemed legally “abandoned,” but during that time, the city should use due diligence in finding the owner. The state’s Treasury Department has a publication that found at <http://www.treasury.state.tn.us/unclaim/PDFs/UCPBook2014.pdf> . I will attach pertinent pages, but it may be helpful to note what the state considers as due diligence in attempting to locate an owner to return the overpayment:

# DUE DILIGENCE

- Required for each owner with an account balance of \$50 or greater.
- Due diligence consists of mailing a first class letter to the owner.
- The purpose of the letter is to give the owner the opportunity to collect the funds from you and relieve you of the liability to have to report and remit the funds to the Unclaimed Property Division.
- You **MUST** wait at least 60 days after you send the letters to the owners before you send in your report to the Unclaimed Property Division. **Note:** You are still required to submit your report by May 1.
- You can not wait any longer than 120 days from the time you send the letters to the owners to the time you send in your report to the Unclaimed Property Division.
- It is in your company's best interest to return the funds to the owner rather than turn the funds over to the Division of Unclaimed Property. Owners that are still customers or employees of yours tend to get upset when their funds are turned over to the Division of Unclaimed Property.
- You may be subject to penalties if you do not comply with the due diligence requirements.



**IMPORTANT:** You may NOT charge or deduct a fee from the owners account to perform the due diligence. If you use a vendor to perform your due diligence, make sure they are not charging a fee to the owner. If a vendor does charge or deducts a fee, it does not constitute your requirement of due diligence and you may be subject to penalties.

## SAMPLE DUE DILIGENCE

Below is a sample Due Diligence Letter. If you use a format different than below, you must ensure that you include your company's name, address and phone number where the owners may contact to claim their property.

<b>ABC Corporation</b> 1st Avenue South Big City, US 99999-9999 (123) 555-1234	
January 1, 2009 Owner Name 1234 Any Road St. N Any Town, US 99999-9999	Account #: xxxxx Balance: \$xxx.xx
Dear Owner Name:	
We are holding unclaimed property of at least \$50 due to the person listed above. The owner may claim this property by contacting us at the address and/or telephone number listed below.	
ABC Corporation 1st Avenue South Big City, US 99999-9999 (123) 555-1234	
If we do not hear from the owner by (the last date your system can remove items for refund before reporting to the state), the law requires us to submit this property to the Tennessee Treasury Department Unclaimed Property Division.	
Sincerely,	
I.M. HELPFUL ABC Company	

Remember, you are required to wait 60 days after you mail the due diligence letter before you send the funds to the state. If an owner comes forward within those 60 days, you are required to return the funds to the owner.

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### REPORTING MADE SIMPLE.

If you return the property to your customers,  
you will not have to report that record.



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Reporting Help: [UCP.holders@tn.gov](mailto:UCP.holders@tn.gov)

Next, we turn to the Abandoned Property statute particular to courts.

“All property<sup>i</sup> held for the owner by any court, including a federal court, public corporation, public authority or agency, or public officer, or a political subdivision, including, but not limited to, the state of Tennessee or any of its departments or agencies, that has **remained unclaimed by the owner for more than one (1) year is presumed abandoned**, except property in the custody or control of any state or federal court in any pending action. ... Property described above, without regard to any activity or inactivity within the past one (1) year, shall also be presumed

abandoned if the owner thereof is known to the holder to have died and left no one to take the property by will and no one to take the property by intestate succession. T.C.A. § 66-29-110.

Once due diligence is complete and the year has expired, we disagree somewhat with the Department of Revenue who thinks the entire amount, if not returned, should be turned over immediately to the state by reporting the amounts on the appropriate lines of form PRV414.<sup>ii</sup> Instead, the Department's guide has an online resource to assist in reporting the amount to the state. Start at the website (<http://treasury.tn.gov/unclaim/reportproperty.html>) or on page 6 of the guide.

## ELECTRONIC REPORTING

- ▶ All holder reports MUST be filed electronically and be in the NAUPA accepted format. No paper reports will be accepted.
- ▶ You have several options to create your NAUPA accepted format:
  - Create it yourself. You can go to our website at [www.treasury.tn.gov/unclaim](http://www.treasury.tn.gov/unclaim) to download the specifications.
  - Use our FREE software. You can go to our website at [www.treasury.tn.gov/unclaim](http://www.treasury.tn.gov/unclaim) to find NAUPA approved software and instructions.
  - Purchase software from other vendors. There are several products on the market that can help you track and create your NAUPA accepted file.
- ▶ ENCRYPTION. Your report MUST be encrypted with our encryption method. All reports not encrypted within our specifications will be returned. If a corrected file is not sent to us in time, your report will be considered late and may be subject to penalties.
  - Go to our website at [www.treasury.tn.gov/unclaim](http://www.treasury.tn.gov/unclaim) to download our free encryption tool.
  - If you created our file using ETM or HRS Pro, your file will automatically be encrypted within our specifications.
  - If you use a third party vendor to create your file, please check with them to see if they obtained our encryption method. If not, you can use the free encryption tool after you have created your file.
- ▶ DELIVERY. You are encouraged to submit your report (file) to us electronically instead of via e-mail or mailing it to us. Follow the link on our website, "Submit Your Tennessee Holder Report Here".

Please note that **the policy applies to amounts of \$50 or greater**; it does not address *smaller* amounts. MTAS recommends that the city still follow the due diligence steps, but once they become abandoned after a year, to consider the

overpayments in bulk, not individually, and if it meets the \$50 threshold, to file an Abandoned/Unclaimed Property Report. Alternatively, a city could decide that these lesser individual overpayments do not require such actions detailed in the policy and it may have the following options: 1) follow the Department of Revenue's recommendation (sending all to the state through the PRV414 line); 2) decide to apply the amount to other outstanding debt the owner has with the city, perhaps by applying the funds to the court's accounts receivable (outstanding fines and court costs; or 3) allocate the funds in a manner that combines the two approaches. As always, a cautionary approach is best.

We hope this information is helpful. Please don't hesitate to call if you have questions.

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<sup>i</sup> Though not stated specifically in the chapter's definitions, "property" appears to include cash under the § 66-29-106 ( (a) The following funds held or owing by any business association or by any utility are presumed abandoned: (1) Any deposit made by a subscriber with a utility to secure payment, any sum overpaid, or any sum paid in advance for utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than two (2) years after the termination of the services for which the deposit, overpayment, or advance payment was made.)

<sup>ii</sup> From an email conversation with Billy Trout Thursday, April 17, 2014 1:28 PM