

KERN COUNTY

Audit Report

COURT REVENUES

July 1, 2004, through June 30, 2012



JOHN CHIANG
California State Controller

November 2013



JOHN CHIANG
California State Controller

November 26, 2013

Mary B. Beddard
Auditor-Controller
County of Kern
1115 Truxtun Avenue, 2nd Floor
Bakersfield, CA 93301

Terry McNally
Court Executive Officer
Superior Court of California, Kern County
1415 Truxtun Avenue, Suite 212
Bakersfield, CA 93301

Dear Ms. Beddard and Ms. McNally:

The State Controller's Office (SCO) audited Kern County's court revenues for the period of July 1, 2004, through June 30, 2012.

Our audit found that the county underremitted \$613,075 in court revenues to the State Treasurer because it:

- Underremitted emergency medical air transportation penalties by \$622,709;
- Underremitted the 50% excess fines, fees, and penalties by \$218,454; and
- Overremitted emergency medical air transportation penalties by \$228,088.

The County Auditor-Controller's Office should remit the balance of \$613,075 to the State Treasurer.

The county should differentiate the individual accounts making up this amount on the bottom portion of the monthly TC-31, Remittance to State Treasurer, in accordance with standard remittance procedures. The county should state on the remittance advice that the account adjustments relate to the SCO audit for the period of July 1, 2004, through June 30, 2012.

Please mail a copy of the TC-31 and documentation supporting the corresponding adjustment(s) to the attention of the following individuals:

Jerry Zhou, Audit Manager
Division of Audits
State Controller's Office
Post Office Box 942850
Sacramento, CA 94250-5874

Cindy Giese, Collections Supervisor
Division of Accounting and Reporting
Bureau of Tax Administration
Post Office Box 942850
Sacramento, CA 94250-5872

Once the county has paid the underremitted Trial Court Improvement Fund amounts, we will calculate a penalty on the underremitted amounts in accordance with Government Code sections 68085, 70353, and 70377.

If you have any questions, please contact Elizabeth Gonzalez, Chief, Local Government Compliance Bureau, at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Mike Maggard, Chairman
Kern County Board of Supervisors
John Judnick, Senior Manager
Internal Audit Services
Judicial Council of California
Julie Nauman, Executive Officer
Victim Compensation and Government Claims Board
Greg Jolivette
Legislative Analyst's Office
Sandeep Singh, Fiscal Analyst
Division of Accounting and Reporting
State Controller's Office
Cindy Giese, Supervisor, Tax Programs Unit
Division of Accounting and Reporting
State Controller's Office

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Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety of court revenues remitted to the State of California by Kern County for the period of July 1, 2004, through June 30, 2012.

Our audit disclosed that the county underremitted \$613,075 in court revenues to the State Treasurer because it:

- Underremitted emergency medical air transportation penalties by \$622,709;
- Underremitted the 50% excess fines, fees, and penalties by \$218,453; and
- Overremitted emergency medical air transportation penalties by \$228,088.

Background

State statutes govern the distribution of court revenues, which include fines, penalties, assessments, fees, restitutions, bail forfeitures, and parking surcharges. Whenever the State is entitled to a portion of such money, the court is required by Government Code (GC) section 68101 to deposit the State's portion of court revenues with the county treasurer as soon as practical and provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the funds and a record of the money collected to the State Treasurer at least once a month.

GC section 68103 requires that the SCO determine whether or not all court collections remitted to the State Treasurer are complete. GC section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, GC section 12410 provides the SCO with general audit authority to ensure that state funds are properly safeguarded.

Objective, Scope, and Methodology

Our audit objective was to determine whether the county completely and accurately remitted court revenues in a timely manner to the State Treasurer for the period of July 1, 2004, through June 30, 2012. We did not review the timeliness of any remittances the county may be required to make under GC sections 70353, 77201.1(b)(1), and 77201(b)(2).

To meet our objective, we reviewed the revenue-processing systems within the county's Superior Court, Probation Department, and Auditor-Controller's Office.

We performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the county that show court revenue distributions to the State, the county, and the cities located within the county

- Gained an understanding of the county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow
- Analyzed various revenue accounts reported in the county's monthly cash statements for unusual variations and omissions
- Evaluated the accuracy of revenue distribution, using as criteria various California codes and the SCO's *Manual of Accounting and Audit Guidelines for Trial Courts*
- Tested for any incorrect distributions
- Expanded any tests that revealed errors to determine the extent of any incorrect distributions

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We did not audit the county's financial statements. We considered the county's internal controls only to the extent necessary to plan the audit. This report relates solely to our examination of court revenues remitted and payable to the State of California. Therefore, we do not express an opinion as to whether the county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

Kern County underremitted \$613,075 in court revenues to the State Treasurer. The underremittances are summarized in Schedule 1 and described in the Findings and Recommendations section of this report.

Follow-Up on Prior Audit Findings

The county has satisfactorily resolved the findings noted in our prior audit report, issued July 14, 2006.

Views of Responsible Officials

We issued a draft audit report on April 22, 2013. Mary Bedard, Auditor-Controller-County Clerk, responded by letter dated May 6, 2013 (Attachment A), agreeing with the audit results and providing a clarification in regard to the potential penalty for underremitting funds to the Trial Court Improvement Fund. Further, Terry McNally, Court Executive Officer, responded by letter dated May 14, 2013 (Attachment B), agreeing with the audit results.

Restricted Use

This report is solely for the information and use of Kern County, the Kern County Courts, the Judicial Council of California, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

November 26, 2013

**Schedule 1—
Summary of Audit Findings by Fiscal Year
July 1, 2004, through June 30, 2012**

<u>Description of Finding</u> <u>Account Title¹-Code Section</u>	<u>Fiscal Year</u>								<u>Total</u>	<u>Reference²</u>
	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>		
Underremitted State EMAT Penalties: GC §7600.1	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 109,473	\$ 513,236	\$ 622,709	Finding 1
Underremitted MOE (50% Split): GC §77205	18,348	16,932	18,699	17,848	16,687	15,075	39,956	74,909	218,454	Finding 2
Overremitted State EMAT Penalties: GC §76000.1	—	—	—	—	—	—	(66,956)	(161,132)	(228,088)	Finding 3
Net amount underpaid (overpaid) to the State Treasurer	<u>\$ 18,348</u>	<u>\$ 16,932</u>	<u>\$ 18,699</u>	<u>\$ 17,848</u>	<u>\$ 16,687</u>	<u>\$ 15,075</u>	<u>\$ 82,473</u>	<u>\$ 427,013</u>	<u>\$ 613,075</u>	

Legend: GC = Government Code; H&SC = Health and Safety Code; PC = Penal Code; VC = Vehicle Code

¹ The identification of State revenue account titles should be used to ensure proper recording when preparing the Remittance Advice Form TC-31 to the State Treasurer.

² See the Findings and Recommendations section.

**Schedule 2—
Summary of Underremittances by Month
Trial Court Improvement Fund
July 1, 2004, through June 30, 2012**

Month	Fiscal Year							
	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
July	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
August	—	—	—	—	—	—	—	—
September	—	—	—	—	—	—	—	—
October	—	—	—	—	—	—	—	—
November	—	—	—	—	—	—	—	—
December	—	—	—	—	—	—	—	—
January	—	—	—	—	—	—	—	—
February	—	—	—	—	—	—	—	—
March	—	—	—	—	—	—	—	—
April	—	—	—	—	—	—	—	—
May	—	—	—	—	—	—	—	—
June	18,348	16,932	18,699	17,848	16,687	15,075	39,956	74,909
Total underremittances to the State Treasurer	<u>\$ 18,348</u>	<u>\$ 16,932</u>	<u>\$ 18,699</u>	<u>\$ 17,848</u>	<u>\$ 16,687</u>	<u>\$ 15,075</u>	<u>\$ 39,956</u>	<u>\$ 74,909</u>

NOTE: Delinquent Trial Court Improvement Fund remittances not remitted to the SCO within 45 days of the end of the month in which the fees were collected are subject to penalty, pursuant to Government Code section 68085(h). The SCO will calculate and bill the county for the penalty amount after the county pays the underlying amount owed.

**Schedule 3—
Summary of Overremittances by Month
July 1, 2004, through June 30, 2012**

Month	Fiscal Year						
	2004-05	2005-06	2006-07	2007-08	2009-10	2010-11	2011-12
July	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 13,064
August	—	—	—	—	—	—	13,368
September	—	—	—	—	—	—	13,944
October	—	—	—	—	—	—	13,184
November	—	—	—	—	—	—	11,644
December	—	—	—	—	—	—	11,628
January	—	—	—	—	—	2,300	14,484
February	—	—	—	—	—	9,272	14,648
March	—	—	—	—	—	13,996	14,556
April	—	—	—	—	—	13,412	13,836
May	—	—	—	—	—	14,124	13,200
June	—	—	—	—	—	13,852	13,576
Total overremittances to the State Treasurer	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 66,956	\$ 161,132

Findings and Recommendations

**FINDING 1—
Underremitted
Emergency Medical
Air Transportation
(EMAT) penalties**

The Kern County Auditor’s Office did not make the required distributions for emergency medical air transportation (EMAT) penalties from January 2011 through June 2012. County personnel indicated that the required distribution was inadvertently overlooked.

Starting January 1, 2011, Government Code (GC) section 76000.10(c)(1) requires a \$4 penalty upon every fine levied on criminal offenses, but excluding parking offenses.

The underremittances had the following effect:

Account Title	Understated/ (Overstated)
State EMAT Identification Fund – GC 76000.10(c)(1)	\$ 622,709
County State Trust Account	(622,709)

Recommendation

The county should remit \$622,709 to the State Treasurer and report on the remittance advice form (TC-31) an increase to the State Emergency Medical Air Transportation Act Fund – GC Section 76000.10(c)(1). The county should also make the corresponding account adjustments.

The county auditors should establish formal procedures to ensure that state EMAT penalty revenues are correctly distributed in accordance with statutory requirements. A redistribution should be made for the collection period starting July 2012 through the date on which the current system is revised.

Superior Court’s Response

The Superior Court did not refer to Finding 1 in its response; see Attachment B.

County’s Response

The Auditor-Controller agreed with Finding 1.

**FINDING 2—
Underremitted excess
of qualified fines, fees,
and penalties**

The County Auditor-Controller's Office underremitted by \$218,454 the 50% excess of qualified fines, fees, and penalties to the State Treasurer for the eight fiscal years starting July 1, 2004, and ending June 30, 2012.

GC section 77201(b)(2) requires Kern County, for its base revenue obligation, to remit \$5,530,972 for fiscal year (FY) 2004-05 and each fiscal year thereafter. In addition, GC section 77205(a) requires the county to remit to the Trial Court Improvement Fund 50% of qualified revenues that exceed the stated base for each fiscal year.

The error occurred because incorrect entries were used in the county and court's distribution working papers and from the fiscal impact of conditions identified in this report's findings as follows:

- For all eight fiscal years, the court did not appropriately distribute \$1 to the Jail Facility Fund and \$1 to the Court Construction Fund from the county's 23% portion from the Bakersfield court branch. Instead, the \$1 jail facility and \$1 county court construction penalties were taken out of the total traffic violator school (TVS) state 77% portion of bail. GC section 77205 specifies that qualified revenues are to be reported as stated in December 31, 1997. On this date, Vehicle Code (VC) section 42007 specifically required the penalties to be taken from the county's 23%. Therefore, the 77% TVS bail applicable to the Maintenance-of-Effort (MOE) included the reduction of the \$2 penalty amounts; \$261,280 should have been included in the MOE.
- As noted in Finding 3, EMAT penalties were distributed from TVS bail starting January 2011 through June 2012. \$175,628 ($\$228,088 \times 77\%$) should have been included in the MOE.

The qualified revenues reported for FY 2004-05 were \$11,815,647. The excess, above the base of \$5,530,972, is \$6,284,675. This amount should be divided equally between the county and the State, resulting in \$3,142,338 excess due the State. The county has remitted a previous payment of \$3,123,990, causing an underremittance of \$18,348.

The qualified revenues reported for FY 2005-06 were \$12,459,078. The excess, above the base of \$5,530,972, is \$6,928,106. This amount should be divided equally between the county and the State, resulting in \$3,464,053 excess due the State. The county has remitted a previous payment of \$3,447,121, causing an underremittance of \$16,932.

The qualified revenues reported for FY 2006-07 were \$11,307,531. The excess, above the base of \$5,530,972, is \$5,776,559. This amount should be divided equally between the county and the State, resulting in \$2,888,279 excess due the State. The county has remitted a previous payment of \$2,869,581, causing an underremittance of \$18,699.

The qualified revenues reported for FY 2007-08 were \$10,333,006. The excess, above the base of \$5,530,972, is \$4,802,034. This amount should be divided equally between the county and the State, resulting in \$2,401,017 excess due the State. The county has remitted a previous payment of \$2,383,169, causing an underremittance of \$17,848.

The qualified revenues reported for FY 2008-09 were \$10,176,001. The excess, above the base of \$5,530,972, is \$4,645,029. This amount should be divided equally between the county and the State, resulting in \$2,322,515 excess due the State. The county has remitted a previous payment of \$2,305,828, causing an overremittance of \$16,687.

The qualified revenues reported for FY 2009-10 were \$10,897,519. The excess, above the base of \$5,530,972, is \$5,366,547. This amount should be divided equally between the county and the State, resulting in \$2,683,274 excess due the State. The county has remitted a previous payment of \$2,668,199, causing an underremittance of \$15,075.

The qualified revenues reported for FY 2010-11 were \$12,772,106. The excess, above the base of \$5,530,972, is \$7,241,134. This amount should be divided equally between the county and the State, resulting in \$3,620,567 excess due the State. The county has remitted a previous payment of \$3,580,611, causing an underremittance of \$39,956.

The qualified revenues reported for FY 2011-12 were \$12,446,147. The excess, above the base of \$5,530,972, is \$6,915,175. This amount should be divided equally between the county and the State, resulting in \$3,457,588 excess due the State. The county has remitted a previous payment of \$3,382,679, causing an underremittance of \$74,909.

The following table shows the effect of the under- and overremittances:

Account Title	Understated/ (Overstated)
Trial Court Improvement Fund—GC §77205	
FY 2004-05	\$ 18,348
FY 2005-06	16,932
FY 2006-07	18,699
FY 2007-08	17,848
FY 2008-09	16,687
FY 2009-10	15,075
FY 2010-11	39,956
FY 2011-12	74,909
County General Fund	218,454

Recommendation

The county should remit \$218,454 to the State Treasurer and report on the remittance advice form (TC-31) an increase to the Trial Court Improvement Fund—GC section 77205. The county also should make the corresponding account adjustments.

Superior Court's Response

The Superior Court believes there should be no penalties associated with the portion of Finding 2 that relates to TVS bail amounts excluded from MOE calculations due to lack of direction prior to the audit.

Also, the Court pointed out that there was an error on page 8 of the draft report.

County’s Response

The Auditor-Controller offered a clarification (Attachment A) in regard to the potential penalty for underremitting of the Trial Court Improvement Funds.

The County remits the revenues to the State based on deposits made by the local Courts office into the County funds. The County calculates the required 50% of qualified revenues that exceed the state base for each year based on these deposits.

As stated in finding number two the Courts did not appropriately distribute \$1 to the Jail Facility Fund and \$1 to the Court Construction Fund from the County’s 23% portion from Bakersfield Court branch. Instead the \$1 to the jail Facility Fund and the \$1 to the Court Construction Fund were taken out of the total traffic violator school (TVS) State 77% portion of bail.

Therefore any penalty for under remittance of Trial Court Improvement should not fall on the County, but unto the local Court.

SCO’s Comment

The court should have appropriately distributed the TVS bail for the County to correctly calculate the 50% of qualified revenues. This finding remains as stated.

SCO has corrected the error on page 8 of the draft report. This was a typographical error. In the final report, it states that EMAT penalties distributed from TVS bail should have been included in the MOE.

**FINDING 3—
Overremitted EMAT
penalties**

The Superior Court of Kern County levied a \$4 state EMAT penalty on TVS bail starting January 2011. Court personnel indicated that the required distribution was uninformed.

Starting January 1, 2011, GC section 76000.1 requires a \$4 penalty upon every fine levied on criminal offenses including traffic offenses. However, upon the election of traffic school, the fine and penalties are converted to TVS bail as mandated by VC section 42007. Therefore, because EMAT penalties are not included in the exceptions listed within VC section 42007, they should remain as TVS bail.

The inappropriate distributions of county and state penalties affect the revenues reported to the State Trial Court Improvement Fund under the Maintenance of Effort formula pursuant to GC section 77205. In addition, the inappropriate distribution had the following effect:

<u>Account Title</u>	<u>Understated/ (Overstated)</u>
Emergency Medical Air Transportation Act Fund	\$ (228,088)
County General Fund	228,088

Recommendation

The county should offset subsequent remittances by \$228,088 to the State Treasurer and report on a TC-31 form a decrease to the State Emergency Medical Air Transportation Act Fund. The court should take steps to insure that EMAT penalties are distributed in accordance with the statutory requirements. A redistribution should be made for the period of July 2012 through the date on which the current system is revised.

Superior Court's Response

The Court stated that the cause of this finding was not overlooked.

“. . . the Court simply had no official guidance or indication, before performance of the audit, the State's intended distribution method of the EMAT penalty for TVS cases would be any different than it would be for other vehicle code convictions.”

County's Response

The County did not respond to Finding 3.

SCO's Response

We have changed the cause of the finding from “inadvertently overlooked” to “uninformed”.

Additionally, Kern County Superior Court should comply with legislative changes which effect court revenue distributions. It is responsible for the accuracy of the distributions of court revenues. Appendix C of the SCO Court Distribution Guidelines is reference material to assist the Court to distribute revenues. In the future, any questions regarding the Appendix C should be directed to SCO Accounting and Reporting Division.

**Attachment A—
County Auditor-Controller's Response
to Draft Audit Report**



Mary B. Bedard, CPA
Auditor-Controller-County Clerk

KERN COUNTY AUDITOR-CONTROLLER-COUNTY CLERK

1115 Truxtun Avenue, 1st and 2nd Floor • Bakersfield, CA 93301-4639

May 6, 2013

Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office, Division of Audits
PO Box 942850, Sacramento, California 942850

Dear Mr. Mar,

The County of Kern concurs with the findings in the audit reported dated April 22, 2013. We only have one point of clarification in regard to the potential penalty for under remitting of the Trial Court Improvement fund. The County remits the revenues to the State based on deposits made by the local Courts office into the County funds. The County calculates the required 50% of qualified revenues that exceed the state base for each year based on these deposits.

As stated in finding number two the Courts did not appropriately distribute \$1 to the Jail Facility Fund and \$1 to the Court Construction Fund from the County's 23% portion from the Bakersfield Court branch. Instead the \$1 to the jail Facility fund and the 1\$ to the Court Construction fund were taken out of the total traffic violator school (TVS) State 77% portion of bail.

Therefore any penalty for under remittance of Trial Court Improvement should not fall on the County, but unto the local Court.

We would like to thank your staff for their professionalism while conducting the audit.

Sincerely,

A handwritten signature in cursive script that reads "Mary B. Bedard".

Mary B. Bedard, CPA
Auditor-Controller-County Clerk

MBB/mgh

cc: Terry McNally, Court Executive Officer

**Attachment B—
Court’s Response to
Draft Audit Report**



JUDGES

John L. Fielder
 Gary T. Friedman
 Kenneth C. Twisselman II
 Jerold L. Turner
 Sidney P. Chapin
 Jon E. Stuebbe
 Michael B. Lewis
 Michael G. Bush
 John D. Oglesby
 Gary R. Witt
 Colette M. Humphrey
 Craig G. Phillips
 Robert S. Tafoya
 Louis P. Etcheverry
 William D. Palmer
 Cory J. Woodward
 David R. Lampe
 John R. Brownlee
 Judith K. Dulcich
 Louie L. Vega
 John S. Somers
 Michael E. Dellostritto
 Steven M. Katz
 Raymonda Marquez
 Larry Errea
 J. Eric Bradshaw
 Charles Brehmer
 Lorna H. Brumfield
 Bryan K. Stainfield
 Susan M. Gill
 Jose R. Benavides
 John W. Lua
 Stephen D. Schuett
 Thomas S. Clark
 Brian M. McNamara
 Ken G. Pritchard

COURT COMMISSIONERS

James L. Compton
 Ralph L. McKnight, Jr.
 Linda S. Etienne
 J. J. Gianquinto
 Ralph W. Wyatt

SENIOR JUVENILE
COURT REFEREE

Peter A. Warmerdam

COURT EXECUTIVE OFFICER
CLERK OF THE COURT

Terry McNally

SUPERIOR COURT OF CALIFORNIA COUNTY OF KERN

May 14, 2013.

Mr. Steven Mar, Chief
 Local Government Audits Bureau
 State Controller's Office, Division of Audits
 PO Box 942850
 Sacramento, CA 942850

Dear Mr. Mar:

The Superior Court, County of Kern, is in receipt of your letter of May 6, 2013 and submits the following in response to the audit report.

Initially, Finding 3 refers to over-remitted Emergency Air Medical Transportation (EMAT) penalties levied on Traffic Violator School (TVS) cases, which also relates to Finding 2, under-remitted 50% excess of qualified fines, fees, and penalties affected by TVS fees that *should have* been included in MOE calculations January 2011 through June 2012. Page 8 of the SCO audit report mailed on April 22 erroneously indicates that EMAT penalties distributed from TVS bail should "not" have been included in the MOE.

When the Emergency Air Medical Transportation Penalty was introduced per Assembly Bill No. 2173 in 2010, section 76000.10 of the Government Code was added to read: "... a penalty of \$4 shall be imposed upon *every* conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, except parking offenses . . ."

My accounting staff have researched the matter and to our knowledge, the courts were never instructed by AB 2173, GC 76000.10, or VC 42007 to include the additional \$4 penalty as TVS bail for Traffic School cases. Furthermore, courts didn't receive any official guidance from the State Controller's Office per the Distribution Tables in Appendix C, since Revision 22 is the latest version available to court staff and was effective July 2010. Updates to the Court Distribution Guidelines, issued by the SCO Division of Accounting and Reporting January 9, 2012, mentions distribution changes due to GC 76000.10, but labels the changes "Not Applicable to Appendix C" (see attached).

Further, on page 9 of the SCO audit report mailed on April 22 says, in regard to Finding 3, that "Court personnel indicated that the required distribution was inadvertently overlooked." While the statement on Page 7 of county personnel's indication that the required distribution was "inadvertently overlooked" may be accurate, the use of the same phrase for court personnel is not correct. Based on lack of direction or legal authority to the contrary, we distributed a separate EMAT penalty on all vehicle code convictions, including traffic school cases. This item was not overlooked – the Court simply had no official guidance or indication, before performance of the audit, the State's

State Audit – Page 2

intended distribution method of the EMAT penalty for TVS cases would be any different than it would be for other vehicle code convictions.

Despite the absence of any official direction or legal authority prior to the audit (and to date), our Court has made the changes in our case management system to include the \$4 EMAT penalty amount in the “total bail” amount for TVS cases as directed by the SCO auditors. It seems reasonable that there should be no penalties to the court or county associated with Finding 3 or the portion of Finding 2 that relates to TVS bail amounts excluded from MOE calculations, due to lack of direction prior to the audit.

The under-remitted amount of \$218,454 in 50% excess fines, fees, and penalties is comprised of multiple parts. Approximately \$80,000 relates to the EMAT penalties, and we requested waiver of that penalty above. The remaining amount was based on funds incorrectly distributed to the county as revenue not subject to the 50/50 split. That revenue was available to the county during the years covered by the audit, and had the potential of earning interest at the county rate, which currently higher than the LAIF rate used to determine the penalty. It would follow, that in returning the 50% excess funds, the interest earned (LAIF rate) would also be returned.

In conclusion, the Courts have, as you know, realized significant budgeted reductions in funding over the last few years. As such if you intend on invoking penalties despite the aforementioned, given the over-remitted and under-remitted balances cited in bullet items two and three are almost equal, it is requested that this be considered in your calculations.

Sincerely,


Terry McNally
Court Executive Officer

Cc: Ms. Mary B. Bedard, Auditor-Controller-County Clerk, County of Kern

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>