

Secretary of State AUDIT REPORT

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Circuit, Justice and Municipal Courts Unitary Assessments



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Summary

PURPOSE

The purpose of this audit was to determine whether opportunities exist to collect additional unitary assessment revenue from state and local courts. The unitary assessment is a statutorily set dollar amount to be imposed by justice, municipal, and circuit courts on all individuals convicted of felonies, misdemeanors, and violations for which the penalty includes a fine but not imprisonment.

RESULTS IN BRIEF

We tested a sample of cases at justice and municipal courts, and all circuit court cases subject to the unitary assessment statute, adjudicated during a four-month period, and found that unitary assessments were not always imposed, or were imposed at non-statutory amounts. Based on our results, we estimate the potential loss of revenues to the state could be as much as \$684,000 for calendar year 2000.

Department of Revenue—Justice and Municipal Courts

We reviewed 738 cases at 18 justice and municipal courts and found that unitary assessments were incorrect in more than a quarter of the cases. If the 18 tested justice and municipal courts are representative of all justice and municipal courts, we estimate potential state revenue losses could be as much as \$645,000. This amount represents 6.8 percent of the Department of Revenue's \$9.46 million in estimated justice and municipal court unitary assessment remittances during calendar year 2000. We found:

- Some courts were unaware of the current unitary assessment statutory rates.
- Unitary assessment collections were not always remitted as required by law.¹
- Some courts were misinterpreting the unitary assessment statute to exclude the types of cases they adjudicate.

Judicial Department—Circuit Courts

We reviewed all 69,618 cases subject to the unitary assessment statute filed in the 36 circuit courts during January to April 2000. We found that unitary assessments were incorrect in 3,086 cases (4.4 percent). These cases could represent \$13,059 of lost revenue to the state. Annualized, this potential loss totals approximately \$39,000, which represents less than .5 percent of the Judicial Department's

calendar year 2000 unitary assessment collections totaling \$12.5 million.

RECOMMENDATIONS

We recommend that the Department of Revenue, in collaboration with the Judicial Department, provide appropriate information, training and educational materials to the justice and municipal courts (and county and city finance departments) about their statutory responsibilities for the imposition, collection and timely remittance of unitary assessments; and about legislative actions amending the unitary assessment and related statutes.

Further, **we recommend** that the Department of Revenue, as practical and cost effective, pursue collection of unitary assessment amounts yet owed to the state by justice and municipal courts, revise the department's remittance coupon to include information necessary to monitor compliance, and periodically test justice and municipal court records for compliance.

We recommend that the Judicial Department, as is practical and cost effective, advise the circuit courts to correct the unitary assessment amounts identified by the audit, periodically review unitary assessment data to monitor compliance, and establish policy and appropriate procedures to create and maintain a listing of justice and municipal courts.

AGENCIES' RESPONSES

Department of Revenue:

In general, management agrees with the recommendations and will take steps to implement procedures to increase DOR control over payments of unitary assessments from justice and municipal courts.

Judicial Department:

In general, we are in agreement with the audit conclusions and findings and will use this information to continue to improve unitary assessment collections in the circuit courts and, as recommended, will collaborate with the Department of Revenue to assist with providing information and training to the justice and municipal courts for the same purpose.

See the agencies' complete responses at the end of this report.

¹ Oregon Revised Statute 137.295 (5)

Introduction

Background

The unitary assessment is an amount that Oregon trial courts are required by statute to impose on all persons convicted of felonies, misdemeanors, and violations for which the penalty includes a fine but not imprisonment. As of October 1999, statutory unitary assessment amounts range from \$35 to \$105, depending upon the offense.

When the unitary assessment was developed, its purposes were to:

- Simplify the assessment, collection, and distribution of monetary obligations imposed in criminal cases.
- Establish clear and consistent priorities for distribution of monies collected in criminal cases.
- Establish a more centralized system of state fees, fines, and distributions that could be easily adjusted to accommodate legislative revisions.

There are three types of trial courts in Oregon: Justice of the Peace (county), municipal (city), and circuit (state) courts.

Individual county and city governments establish justice and municipal courts. The courts are substantially unique as to the offenses (not felonies) within their jurisdiction, case loads, populations served, operating characteristics and accounting systems.

Information about unitary assessments is not readily available for justice and municipal court cases. These courts send their remittances and accompanying remittance coupons directly to the Department of Revenue. We estimate the total amount of unitary assessments remitted by justice and municipal courts during calendar year 2000 to

be about \$9.46 million. The actual amount is not tracked by the department.

Circuit courts are part of the judicial branch of state government, subject to the administrative authority and supervision of the Chief Justice of the Supreme Court. Oregon statutes designate 26 judicial districts, each serving from one to five counties with one to 37 judges. There are 36 circuit courts and 163 judges in all. Only circuit courts have jurisdiction over felony offenses.

All circuit courts use the Financial Integrated Accounting System of the Judicial Department. Comprehensive information about every circuit court case is input to the system. In contrast to justice and municipal courts, information is readily available about the circuit court cases, including caseload statistics, fines, fees and unitary assessments imposed on every convicted person. The circuit courts remit unitary assessments and other amounts collected to the Office of the State Court Administrator for transmittal to the Department of Revenue. Unitary assessment payments by circuit courts during calendar year 2000 totaled \$12,517,112.

The Department of Revenue administers the Criminal Fines and Assessments Account. All unitary assessments and certain other amounts received from the courts are put into the account. At the end of each month, the Department distributes all amounts in the account to the state general fund and to various state agencies and programs according to a statutory formula.

Information available during the 1999 legislative session made it appear that justice and municipal courts, in comparison to circuit courts, might be reducing state revenues by waiving unitary assessments while maintaining local revenues through fines and other

penalties. The lack of available information prevented a determination as to whether the justice and municipal courts actually engaged in this practice. Even so, the legislature enacted 1999 Oregon Laws Chapter 1095, Section 6, amending the unitary assessment statute to remove the potential for such practices, if occurring, at any of the trial courts.

After amendment, the unitary assessment statute allows trial courts to waive the unitary assessment only if no fine is imposed on a defendant.² That is, if the unitary assessment is waived, the trial court is not allowed to collect local fine revenues, either. It is still possible, however, that individual statutes may confer limited authority to the trial courts to adjust the unitary assessment.

Audit Results

Our testing identified instances of noncompliance resulting in a loss of revenue to the state that could be as high as \$684,000 for calendar year 2000. We found that oversight of all three types of courts could be improved.

Table #1 – Testing Summary and Estimated Calendar Year 2000 Loss

Court Type	Cases Tested			Estimated Loss
	Number	Errors	Loss	
Justice	342	126	\$861	\$118,743
Municipal	396	71	\$1,385	\$168,081
Circuit	69,618	3,086	\$13,059	<u>\$ 39,177</u>
Subtotal	Courts Tested			<u>\$326,001</u>
Justice	Courts Not Tested			\$136,153
Municipal				<u>\$221,539</u>
Total	All Courts			<u>\$683,693</u>

² Oregon Revised Statute 137.290 (4)

Unitary Assessment Remittances from Justice and Municipal Courts

No complete listing of all justice and municipal courts existed. Ultimately, we were able to confirm the existence of 32 justice and 123 municipal courts at the time of this audit.³ Case statistics are not reported by the courts to any central location, so the total number of cases requiring a unitary assessment is unknown.

We found that nine of the 18 courts we tested were not in compliance with the requirements of the unitary assessment statute. Based on our test results, we estimate that the calendar year 2000 loss to the state could be as high as \$645,000 for all justice and municipal courts.

Unitary Assessments Not Correct

We tested a judgement sample of 342 cases at seven justice courts and 396 cases at 11 municipal courts. We found that unitary assessments for 126 justice and 71 municipal cases were not correct (26.7 percent).

The 197 cases with errors represent a potential state revenue loss of \$861 from justice courts and \$1,385 from municipal courts, a total of \$2,246.

If the 738 cases tested are representative of all cases in those 18 courts, we estimate the potential state revenue loss for the seven justice and 11 municipal courts to be \$118,743 and \$168,081, respectively, a total of \$286,824.

If the 18 courts tested are representative of all justice and municipal courts in the state, we estimate the potential state revenue loss for the 25 remaining justice and 112 municipal courts not tested to be

³ We contacted all counties and cities to identify trial courts. We used this listing, which we believe to be complete, to perform our testing.

\$136,153 and \$221,539, respectively, a total of \$357,692.

Overall, we estimate the potential state revenue loss from all justice and municipal courts could be as much as \$644,517, or 6.8 percent of the estimated \$9.46 million in calendar year 2000 unitary assessment remittances.

We recommend that the Department of Revenue, as is practical and cost effective, pursue collection of unitary assessment amounts:

- Identified as not assessed or assessed incorrectly by the courts tested.
- From the courts tested with results indicating potential, but not specifically identified, state revenue losses.

Promoting Justice and Municipal Court Compliance

Justice and municipal court errors appeared due to courts (or local finance departments) staffs being unaware of the proper application of, or changes in, the unitary assessment statute. Our testing found instances in which courts:

- Did not know they imposed unitary assessments at amounts that were not current.
- Did not remit unitary assessment collections to the Department of Revenue each month as required by the statute.
- Did not remit partial unitary assessment collections to the Department of Revenue. The courts held partial collections until the outstanding balances were received before making remittance.
- Did not know the unitary assessment statute applied to a specific type of offense tried by the court.

- Did not appear to know that the types of offenses generally tried by the court might be subject to the unitary assessment statute. These courts indicated that they try “only” violations or local ordinances. Violations are subject to the unitary assessment statute; local ordinances may be considered violations for purposes of the statute. These courts did not send any remittances to the Department of Revenue in calendar year 1999.

No state agency is assigned responsibility to provide justice and municipal courts with appropriate training and information to meet their unitary assessment responsibilities. The Department of Revenue administers the Criminal Fines and Assessments Account, but is not responsible to provide statewide training to the justice and municipal courts. Likewise, the Judicial Department provides training to the circuit courts as well as information about changes to the unitary assessment statute, but has no responsibility with regard to the justice and municipal courts.

Although the Department of Revenue has provided limited training in the past, and the Judicial Department presents information at discussion forums such as professional conferences, these efforts do not appear to reach all justice and municipal courts and finance departments.

We recommend that the Department of Revenue, in collaboration with the Judicial Department, provide appropriate information, educational materials and training opportunities to the justice and municipal courts (and county and city finance departments) about:

- Their statutory obligations for the imposition, collection and timely remittance of unitary assessments.

- Legislative changes in the unitary assessment and related statutes.

Create a Justice and Municipal Court Registry

No comprehensive listing of the justice and municipal courts existed. Justice and municipal governments created and disbanded these courts with no requirement to report their actions to any state agency or judicial organization. State oversight of the unitary assessment remittances from the justice and municipal courts cannot be efficient or reliable without a complete listing to ensure all courts are monitored.

Passage of House Bill 2513, effective July 6, 2001, requires the Judicial Department to create and maintain a registry of justice and municipal courts. The bill also requires all cities and counties to report information about their courts to the Judicial Department.

Periodic Testing of Court Records

The Department of Revenue does not test justice and municipal court compliance with the unitary assessment statute.

Funding for compliance testing is provided by statute. The Department of Revenue may use up to 2 percent of annual justice and municipal court remittances to the Criminal Fines and Assessments Account for its actual costs of administering funds in the account. Eligible costs include costs of collection and disbursement of funds, examinations, investigations, and related travel expenses.⁴

Unitary assessments (\$9.46 million) and all other remittances from justice and municipal courts totaled \$12.8 million in calendar year 2000. The Department of Revenue used \$43,670, about 0.34 percent of total remittances, for its collection and

disbursement costs. This left available to the department a total of \$213,113 (1.66 percent) that it did not use for this purpose.

Monitor the Justice and Municipal Courts

We found that the Department of Revenue does not collect remittance information and case data necessary to monitor the justice and municipal courts for compliance with the unitary assessment statute.

The Department of Revenue requires justice and municipal courts to report only summarized remittance information using a coupon designed by the department. The coupon provides a lump-sum “State Fee” amount with no breakdown of the various fee, fine and assessment amounts, and no case statistics. The information needed to monitor the justice and municipal courts, therefore, is available only from records and files at each court. Compliance monitoring cannot be performed efficiently until the necessary information is available centrally.

We recommend that the Judicial Department establish policy and appropriate procedures to create and maintain a registry of justice and municipal courts as directed by House Bill 2513.

We recommend that the Department of Revenue:

- Periodically test justice and municipal courts’ compliance with the unitary assessment statute.
- Revise the department’s remittance coupon to require disclosure of unitary assessment amounts and case data necessary to centrally monitor all justice and municipal courts.
- Use the remittance and case data submitted by the justice and municipal courts as the basis for

monitoring the justice and municipal courts statewide.

Unitary Assessment Remittances by Circuit Courts

Circuit courts were not in compliance with the unitary assessment statute in 3,086 (4.4 percent) of 69,618 cases we analyzed. These cases represent \$26,118 of misclassified unitary assessment. The loss of revenue to the state could be as much as \$13,059 because fine amounts for those cases cited into circuit courts by the counties were split with the citing county. We estimate that state revenue losses annualized for calendar year 2000 could be as high as \$39,177 for all circuit courts, which represents less than .5 percent of the Judicial Department’s calendar year 2000 unitary assessment collections totaling \$12.5 million.

Unitary Assessments Not Accurate

We found that in 2,794 of 69,618 cases (4.0 percent), unitary assessments were not imposed at current statutory amounts, resulting in \$14,768 of misclassified revenue and potentially lost revenue of \$7,384.

The primary type of error appeared to be assessments imposed at statutory rates in effect prior to October 1999. In 2,395 cases (85.8 percent), the imposed unitary assessments were \$5 less than the current statutory amounts—the amount current rates increased over prior rates. The other 399 cases (14.3 percent) appeared to be the result of manual or data entry errors.

In cases in which a county official cites a case into the circuit court, the fine amount is split between the county and the state. The result of a \$5 unitary assessment misclassification would be a

⁴ Oregon Revised Statutes 305.830 (3)

shortage to the state of \$2.50 for each \$5 error of this type.

If the four months tested are representative of all months during calendar year 2000, we estimate the potential state revenue losses to be \$22,152 for the year.

Unitary Assessments Not Imposed

We also found in 292 (0.4 percent) of the 69,618 circuit court cases that unitary assessments were not imposed, resulting in state revenue losses of \$5,675. All 292 cases involved offenses subject to the unitary assessment statute.

If the four months tested are representative of all months during calendar year 2000, we estimate a misclassification of \$34,050 for the calendar year. Again, due to the practice of splitting the fine amount between the state and the citing county, this could result in a loss to the state of as much as \$17,025. We did not determine why the courts did not impose unitary assessments in these cases.

We recommend that the Judicial Department advise the circuit courts to review and correct unitary assessment amounts not imposed or imposed incorrectly, when feasible.

Improving Circuit Court Oversight

We found that the Judicial Department does not monitor circuit court compliance with the unitary assessment statute. All circuit court assessments are processed through the department's Financial Integrated Accounting System. This system does not reject non-statutory assessment amounts or flag such cases for review by the originating court.

Further, as our audit has shown, analyses of case data can identify data entry errors, computer system problems, and training or compliance

issues that might otherwise remain undetected and unresolved.

Agency Accomplishments

According to the Judicial Department, it has, since the completion of audit fieldwork, modified the Financial Integrated Accounting System to automatically apply the correct unitary assessment statutory rates.

We recommend that the Judicial Department periodically review the Financial Integrated Accounting System data to monitor circuit court compliance with the unitary assessment statute.

Scope and Methodology

The purpose of this audit was to determine whether Oregon trial courts impose unitary assessments in accordance with *Oregon Revised Statutes* (ORS) 137.290 and related statutes, or whether additional unitary assessment revenues might be collected from the trial courts.

The scope of our review included all Oregon trial courts—that is, state circuit courts, and local justice courts and municipal courts. Our test period covered January 1, 2000 to April 30, 2000, the most recent data available at the time our audit fieldwork was conducted.

In performing this audit, we reviewed applicable statutes and interviewed officials at the Judicial Department, the Department of Revenue, the Legislative Fiscal Office, two judicial associations and 18 trial courts.

We obtained unitary assessment data for circuit courts from the Judicial Department. We analyzed 149,226 circuit court cases adjudicated between January 1, 2000, and April 30, 2000. We determined that 69,618 of these cases were applicable. We compared Judicial Department remittances to the Criminal Fines and Assessments Account to Department of

Revenue's records to test reliability and completeness.

We contacted all counties and most cities in the state to identify justice and municipal trial courts in Oregon. We conducted site visits at 11 municipal courts and seven justice courts. The Department of Revenue provided Criminal Fine and Assessment Account data for justice and municipal courts. A lack of centralized, detailed data coupled with decentralized court operations limited our ability to project our unitary assessment test results to all justice and municipal courts.

We identified applicable case types and selected cases to test for the appropriate application of unitary assessment statutes.

We conducted this audit in accordance with generally accepted government auditing standards.

Department of Revenue's Response to the Audit Report

1. *DOR management agrees with the first recommendation. The DOR will collaborate with the Judicial Department to provide additional training and educational materials to the justice and municipal courts (and/or county and city finance departments).*
2. *DOR management agrees to enhance the current process for advising the justice and municipal courts to review and correct unitary assessment amounts that were assessed incorrectly. The DOR payment coupon will be changed to separate the funds remitted between unitary assessments and other general state fees starting in the year 2003. This will allow the Finance Section to determine exactly what portion of the funds that are remitted are attributable to the unitary assessment program making it easier to reconcile unitary assessments to court records. The department will, where legal and practical, attempt to recover unremitted assessments.*

The DOR believes that the most cost-effective method of encouraging these courts to comply with the unitary assessment program, over the long term, is through education and assistance.

Judicial Department's Response to the Audit Report

The Oregon Judicial Department generally agrees with the conclusions and recommendations in the report. We will collaborate with the Department of Revenue to assist with providing information, training, and educational materials to the justice and municipal courts, as well as information about legislative actions amending the unitary assessment and related statutes.

We will review the practical aspects and cost effectiveness of correcting the errors identified in the audit report related to the circuit courts. In addition, the Judicial Department Internal Auditing staff will conduct independent periodic reviews of systems and unitary assessment data to monitor circuit court compliance with statutes. Finally, the Judicial Department has requested information from cities and counties necessary to establish a listing of justice and municipal courts. This listing is expected to be published at the Judicial Department website by May 1, 2002, and will be updated as changes are reported.

This report, which is a public record, is intended to promote the best possible management of public resources. Copies may be obtained by mail at Oregon Audits Division, Public Service Building, Salem, Oregon 97310, by phone at 503-986-2255 and 800-336-8218 (hotline), or internet at Audits.Hotline@state.or.us and <http://www.sos.state.or.us/audits/audithp.htm>.

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The courtesies and cooperation extended by the officials and staff of the Department of Revenue and the Judicial Department were commendable and much appreciated.

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