

2015

#15–20 TCSO Annual Inmate Commissary Review

Risk Evaluation & Consulting Division  
Travis County Auditor's Office  
March 28, 2016

TRAVIS COUNTY  
AUDITOR'S OFFICE

NICKI RILEY, CPA  
COUNTY AUDITOR



TRAVIS COUNTY  
700 LAVACA  
P.O. BOX 1748  
AUSTIN, TX 78767  
(512) 854-9125  
FAX: (512)854-9164

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To : Greg Hamilton  
Travis County Sheriff

From: Nicki Riley, CPA  
Travis County Auditor

Date: March 28, 2016

Subject: TCSO Annual Review of Inmate Commissary operations for the period of January 1, 2015 to September 30, 2015

Scheduled as part of our statutory requirements, particularly those in Section 511.016 of the Government Code and Section 351.0415 of the Local Government Code, the Risk Evaluation and Consulting (REC) Division of the Travis County Auditor's Office has completed a review of the Travis County Sheriff's Office (TCSO) Commissary, Inmate Welfare, and Inmate Trust accounts. We conducted our examination in accordance with the 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.

## **SCOPE OF EXAMINATION**

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This examination included an assessment of the adequacy and effectiveness of the overall system of financial controls in place for the Commissary's accounting system during the period January 1, 2015 to September 30, 2015. While we conducted reviews of accounting-related controls, this examination did not include operational reviews of the Commissary.

The scope of this examination included an examination of the controls over handling and managing the jail commissary and inmate welfare accounts by examining receipts and disbursements and observing current procedures to ensure compliance with the law as stated in Section 351.0415 of the Local Government Code.

## **REVIEW METHODOLOGY**

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To complete our testing as defined by the audit scope and objectives, we identified sources of criteria against which current operating conditions and internal controls were compared. These criteria included: statutory requirements, Attorney General Opinions, TCSO internal policies and procedures, and Texas jail standards. Opportunities for improvements were identified and cost savings were estimated where applicable.

To meet the objectives of this review, REC performed the following procedures:

- Reviewed federal, state, and county documents related to the Commissary
- Obtained an understanding of the Sheriff's Commissary operations
- Reviewed literature related to Jail Commissary operations
- Evaluated internal controls related to Commissary and Inmate Welfare Fund disbursements, social service programs, and commissary operations.
- Reviewed and analyzed supporting documents and data related to the TCSO Commissary and Finance operations.

Our work was based on applying sampling procedures and analytical models to functional area records and on verbal and written representations from this area. 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 and analytical models would not necessarily disclose all concerns in this area's records and controls that might be material weaknesses or misstatements. In regards to the written and verbal representations made by TCSO personnel, unless otherwise noted in this report, TCSO management maintains that the assertions we relied upon were correct to the best of their knowledge.

## **EXAMINATION TEAM**

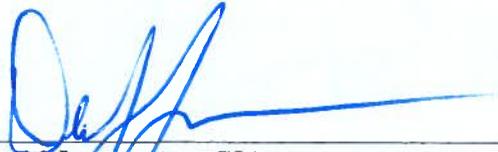
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David Jungerman, CIA, Senior Auditor  
John Gomez, Lead Auditor  
Angel Candelario, Staff Auditor

## **CLOSING**

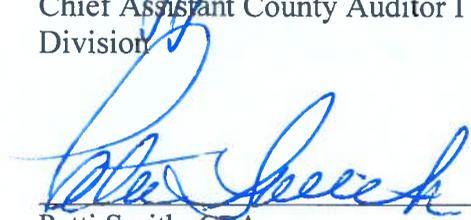
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This report is intended solely for the information and use of your office and the Commissioners' Court. We greatly appreciate the cooperation and assistance received from the management and staff of the Travis County Sheriff's Office during this examination. Please contact us if you have any questions or concerns regarding this report.



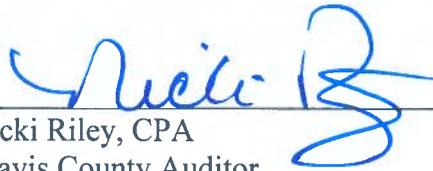
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David Jungerman, CIA  
Chief Assistant County Auditor I - REC  
Division



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Patti Smith, CPA  
First Assistant County Auditor



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Nicki Riley, CPA  
Travis County Auditor

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## Executive Summary

**Unauthorized Commissary Menu Changes** – according to the Local Government Code and the commissary operations contract, the Sheriff is required to approve and sign the commissary menu each time it is changed, prior to the menu being used by the inmates. We noted that none of the six menus issued during the contract period were approved by the Sheriff.

**Incorrect Prices for Commissary Items Charged to Inmates** – in our review of commissary sales for April and August of 2015, we noted that the prices for five items were incorrect in April. The prices for two of these five items remained incorrect in August.

**Sales Tax Charged to a Nontaxable Item Sold in the Commissary** – during our review of sales tax assessments, we noted that one non-taxable item was listed as being taxable, resulting in \$213.66 in sales taxes being incorrectly assessed and collected from inmates.

**Sales Tax Charged during Tax-Free Weekend** – during a sales tax holiday that occurred in our review period, sales taxes were incorrectly assessed on qualifying inmate purchases.

**Sales Tax Calculation on Calling Cards** – the inmate order form did not properly disclose the method of sales tax calculation for calling cards. When we notified commissary management about this statutory disclosure issue, it was immediately corrected.

**Market Price Analysis** – according to the Local Government Code, items sold at a jail commissary should not be priced in excess of the “best value standard”. When we reviewed commissary pricing, 45% of products in our sample appeared to exceed this standard.

**Costs Savings for STEPP Packs** – TCSO may be able to reduce expenditures for postage for indigent inmates by metering postage when letters are sent, instead of using pre-stamped envelopes.

### **Prior Examination Update**

During our previous examination of the Commissary (#14-04, issued November 5, 2014), we had significant concerns about the conversion to the then-new commissary operations provider and the contract that governed TCSO’s dealing with this vendor. Many of these concerns revolved around the limited involvement of TCSO Fiscal in the contract preparation and conversion process.

While some of these issues remain, TCSO has worked to upgrade its vendor contract and to improve controls and accountability. The efforts of TCSO Fiscal personnel have been particularly important in the contract modification process, lobbying for additional controls and stepping outside of their traditional financial/accounting roles as needed. TCSO personnel have stated that they intend to use these new processes on a going-forward basis.

## Background

The Travis County Sheriff's Office manages inmate-related funds for those incarcerated in the county jail, including three interrelated areas: Inmate Trust Accounts; Inmate Welfare Funds; and the Commissary Fund. Inmate Trust Accounts contain funds held in trust for those in custody, with any balances returned upon release. The Commissary sells a variety of products to inmates with profits going to the Inmate Welfare Fund, which can be used to pay for inmate programs and activities.

- *Inmate Trust Accounts* – The TCSO maintains a trust account for each inmate to account for the monies he/she arrived with and subsequent receipts and disbursements as authorized by the inmate.
- *Inmate Welfare Fund (IWF)* – The IWF is maintained to account for the receipt and use of all funds covered by the Local Government Code Section 351.0415 and the Administration Code Section 293.
- *The Commissary Fund* – This fund is maintained and governed by the same codes used to managed the IWF, but is used only for the operation of the commissary.
- *The Commissary* – A commissary is operated by the Sheriff for the benefit of the inmates, which provides a variety of products to sell to inmates at competitive prices. All profits from the sale of commissary items are deposited into the commissary fund and transferred to the IWF in accordance with the Local Government Code Section 351.0415. The activities of the commissary are accounted for in the TCSO Inmate management system, Tiburon, and Keefe's Commissary management system, Edge.

When an individual is booked into the Travis County Corrections System, any funds in their possession are deposited into a trust account in their name. In addition, their family members and acquaintances may send funds to the Sheriff's Office to be posted to the inmates' accounts. These funds may be used to reimburse the County for certain medical and damage-related expenses and can also be used to make purchases from the Jail Commissary.

The Texas Local Government Code Section 351.0415 gives a sheriff the authority to create and manage a commissary for the benefit of county inmates. The jail commissary offers food, beverages, health and hygiene supplies, and recreational items for inmates to purchase with funds from their inmate trust accounts. Although indigent inmates cannot make purchases from the commissary, state law obligates the Sheriff to provide writing materials and hygiene products to these inmates without charge.

A Sheriff has the option to operate a commissary internally or to contract with a third party for its operation. On October 28, 2013, the Sheriff contracted with Keefe Commissary Network, LLC (KCN) to operate and manage the commissary, which was previously managed by TCSO staff. This contract was for three years and renews annually for two additional years. The Sheriff's Office provides commissary services at the Travis County Correctional Complex (TCCC) in Del Valle, TX and the Travis County Jail (TCJ) at the Travis County Criminal Justice Center.

## Status of Prior Areas of Concern

**During our previous examination of the Jail Commissary and its related funds (Examination #14-04 issued on November 5, 2014), we noted a number of areas of concern. The following section details these items, including an update from TCSO personnel on the current status of each.**

### 1. Contract Management

Contractual issues should be documented with a formal document that includes a description of the issue, along with the resolution and action plan. This document should be signed and dated by the TCSO subject matter expert, all individuals involved, and finally by project management, so that it can be reviewed by the Command Staff and the Sheriff. A log of these documents should also be maintained.

*Status: The current contract modification is in its 11<sup>th</sup> iteration. This iteration was released on March 7, 2015, and it appears that the concerns raised by Finance staff have been addressed.*

### 2. Program Implementation and Management

We had concerns pertaining to stakeholder needs and action items not being addressed and documented properly. Overall, an inefficient/ineffective relationship existed among the various stakeholders, particularly between TCSO Fiscal and project management. The action items, requests, and requirements of TCSO Fiscal were consistently not being addressed, damaging internal controls and the ability of Fiscal to properly account for inmate and commissary funds.

*Status: We note improvement in the “tone at the top” and team cohesion. We encourage TCSO to recognize the importance of continued improvement in this area, especially during the testing process.*

### 3. Independent Reconciliation Between Keefe and Tiburon

Financial information and reports downloaded from the KCN website to Travis County are generally not timely and often lack adequate support and documentation. In addition, some contractually mandated reports to be provided by KCN are not being received, and some reports that have been provided are not accessible by TCSO Fiscal. All of these conditions make it very difficult for Fiscal to review and reconcile this financial data, limiting Fiscal’s ability to properly safeguard and account for County and inmate funds.

Controls/items needed for the reconciliation process include:

- exceptions reports for items that did not post properly,
- a log of these items and their resolution,
- a contact person at Keefe to resolve issues on their end,
- documentation of how the issue was resolved, and
- review by management/command staff.

*Status: As of March 10, the vendor has not yet identified a direct contact person for TCSO Finance, in order to address accounting issues as needed. A re-test of deposit services has not yet*

*occurred. Until it occurs, TCSO Finance cannot address these issues to see if they have been resolved.*

#### **4. PCI DSS Compliance**

TCSO should obtain a copy of the PCI DSS report when completed and review its content for potential areas of concern.

*Status: Keefe provided TCSO with a copy of its PCI DSS compliance.*

#### **5. Reports**

Financial reports downloaded from the KCN website are generally not timely and often lack adequate support and documentation. They need to be independent, accurate and reliable. In addition, some contractually mandated reports to be provided by KCN are not being received, and some reports that have been provided are not accessible by TCSO Fiscal. All of these conditions make it very difficult for Fiscal to review and reconcile this financial data, limiting Fiscal's ability to properly safeguard and account for County and inmate funds. These reports need to meet the requirements of the Fiscal Division.

*Status: This mainly pertains to KCN's inability to furnish TCSO Finance with timely, accurate reports with sufficient data to reconcile cash deposits to Tiburon's daily cash balance. This function has not been in active use in over a year.*

#### **6. Expansion of Services**

Potential new services and products that could be offered by KCN include Access Secure Intake, Access Secure Mail, Access Secure Photo, Access Secure Release, Access to Entertainment, Offender Management Suite, and The Enforcer. These potential new products and services could be implemented by KCN with TCSO's approval; however, since these products and services do not encompass the purchase of commissary goods, TCSO would not receive a revenue stream for any of them.

With each of the above added services and products, it appears that TCSO would incur some of the costs of maintaining or administering the product or service, but would receive none of the fees charged by KCN. Other KCN contracts that were publically available allowed for additional revenues for the contracting governmental entities based on per diems for inmate population, as well as activity-based revenue sharing for transactions other than commissary purchases. In other words, the contracts for those other entities include revenue streams not allowed by our contract with KCN.

*Status: No additional services have been added to the suite of service provided by Keefe. Moreover, the addition of any new services will only occur at the request of and approval by Sheriff Hamilton.*

#### **7. Inmate banking**

Complete system testing and a more comprehensive testing plan should be developed, performed, and documented before the Inmate Banking module is re-started to help ensure that accounting controls and protocols are working properly. The testing should include all of the steps necessary for the reconciliation process.

**Status:** TCSO Finance has developed a comprehensive test plan and three month pilot study. The test plan and study were written to comport with the updated COSO Internal Control framework, and were approved by the Audit team in August 2015. Testing has not yet occurred on this product – the ongoing contract modification process has kept this from occurring. TCSO Finance is ready to commence testing once this obstacle is overcome. In addition, Keefe has recently employed a new on-site manager which may further delay the testing process, while this party is trained for the position.

## **8. SecurePak**

Complete system testing and create a more comprehensive testing plan before SecurePak services are re-started. The testing should include all of the reconciliation process, delivery process and return item process.

**Status:** No testing has occurred related to SecurePak, and no testing is likely to occur until contract modifications are finalized. It is not known when this process will be complete.

## **9. New Products**

The contract should be amended for new products including SecurePak. Before a new product is implemented, operational testing should occur, along with walk-throughs and management signoffs.

**Status:** The 11<sup>th</sup> iteration of the contract modification does address SecurePak. Aside from Keefe deposit services, no other services are discussed in the contract. TCSO has stated that going forward, any expansions of service must be included in the contract.

## Current Findings

### 1. Unauthorized Commissary Menu Changes

The Texas Local Government Code gives a sheriff broad authority to create and manage a commissary for the benefit of county inmates. A sheriff also has the ability to contract the commissary services to a vendor. These outside entities must operate the commissary in accordance with the rules set by the Texas Commission of Jail Standards.

Texas Local Government Code Section 351.0415 (f) provides rules to what the sheriff or sheriff's designee shall consider when entering into a contract for commissary services. Rule two in Section (f) requires that a sheriff consider “*the menu items offered by the provider and the price of those items*”. Furthermore, according to Sections 10.5 and 11.4 of the commissary contract, the Sheriff must approve and sign each menu before the revised menus can be distributed to the inmates as stated below:

*10.5 Commissary Merchandise* Keefe shall provide high-quality commissary goods to the Sheriff for sale to the inmates at a price comparable to outside retail prices. The goods shall include at least those listed in Attachment G. In addition, Keefe shall continue to provide either the product brands provided prior to commencement of this Agreement or equivalent goods. **Keefe shall not make any changes, additions, or deletions to these goods or the price of them without the prior written approval of the Sheriff.**

*11.4 Approved Commissary Products* The Sheriff shall select the list of commissary products from Attachment G that are approved for sale in the Facilities and notify Keefe of the products on the approved list. **If the Sheriff wants to change the commissary products that are approved for sale in the Facilities, the Sheriff must request the new products, determine a mutually agreeable price at which to offer the new products through negotiations with Keefe if necessary, and notify Keefe of the new products to be added on the approved list at least 14 days before the approval is to be effective.**

In order to test if the correct menu item prices were being charged to the inmates, we requested a two month sample of sales data. After receiving the commissary sales data for April and August of 2015, we obtained the applicable menus in order to verify the prices that were charged to the inmates. We received two commissary menus, noting that each menu had some differences in the prices and type of items listed. We requested the signed and approved copy of the updated menus, but we determined that the menu was changed without proper approval from the Sheriff.

The table at the top of the following page summarizes the number of different menus that were issued without proper approval. Note that two of these menus are from a time period beyond the period of this audit. We expanded our testing period to include all the menus issued from the start of the contract period and noted that the only menu that was approved by the Sheriff was the original menu included in the contract when it was signed in October of 2013.

Menu Date	No. of Items added	No. of Items deleted	No. of Items Price Change
April-14	0	0	1
July-14	13	1	3
January-15	10	0	48
May-15	0	2	0
June-15	0	0	0
July-15	2	0	0

**Recommendation:**

The Sheriff should verify and approve the commissary menu before it is distributed to the inmates.

**Management Response:**

Agreed. Following a Commissary Merchandise Pricing Evaluation in July 2015, TCSO Finance advised that any change to the commissary menu including: an adjustment in price (up or down), the addition of a new item, the removal of an existing item, and/or change in the package type or size (increase or decrease) of any item sold should be documented and approved by the Sheriff.

**2. Incorrect Prices for Commissary Items Charged to Inmates**

The Auditor's Office reviewed the commissary sales for the April and August of 2015 to verify if the inmates were charged the correct price of the item listed on commissary menu. We noted that in April of 2015, there were five items charged incorrectly to the inmates. Two of these items remained incorrect in August of 2015. The sales of these items for these periods are detailed below:

**April of 2015:**

Location	Item	Price List	Amount Charged	Variance	Qty. Sold	Total over/(under charged)
TCJ	LARGE STAMPED ENVELOPE	\$0.73	\$0.70	(\$0.03)	35	(\$1.05)
TCJ	HEMORRHOIDAL OINTMENT	\$5.00	\$8.00	\$3.00	1	\$3.00
TCJ	1 EACH 1ST CLASS STAMP	\$0.49	\$0.46	(\$0.03)	22	(\$0.66)
TCCC	MEN BRIEFS 2XL	\$2.75	\$3.75	\$1.00	16	\$16.00
TCJ	8/PK FRSTD STRBRY POPTRTS	\$3.15	\$3.00	(\$0.15)	21	(\$3.15)
<b>Total</b>						\$14.14

**August of 2015:**

Location	Item	Price List	Amount Charged	Variance	Qty. Sold	Total over/(under charged)
TCJ	LARGE STAMPED ENVELOPE	\$0.73	\$0.70	(\$0.03)	96	(\$2.88)
TCJ	1 EACH 1ST CLASS STAMP	\$0.49	\$0.46	(\$0.03)	15	(\$0.45)
<b>Total</b>						(\$3.33)

Note that these billing errors, and the cumulative net amount over/under charged to the inmates, was relatively minor.

**Recommendation:**

The Commissary Vendor provides a kiosk to the inmates from which to purchase commissary items. Keefe should correct the prices listed on their system to reflect the correct prices on the applicable commissary menu. Keefe sends an invoice to the TCSO Finance Division each month for payment of commissary sales minus commissions owed to the commissary fund. We recommend that KCN also send the detailed sales data for that invoice, so TCSO Finance can reconcile the invoice and immediately address any billing discrepancies like the ones noted in the previous tables

**Management Response:**

Agreed. TCSO Finance will make the request to the vendor. In addition, TCSO Finance has confirmed that price discrepancies noted above (for stamps and stamped envelopes) have been corrected and that price uniformity now exists between the Keefe ordering system and what inmates are charged (based on a random sample of processed orders of inmates who made stamp and stamped envelope purchases on March 8, 2016).

**3. Sales Tax Charged to a Nontaxable Item Sold in the Commissary**

In general, commissary sales are taxable. However, like at a grocery store, some items are not eligible for sales tax. The State of Texas taxes commissary sales identically to items sold by a convenience store. The Texas Comptroller has issued publications describing taxable and nontaxable products for these types of stores<sup>1</sup>.

Examples of nontaxable items are: bakery items, condiments, dairy products, beverages, drugs & medicines, meats, and snacks. Taxable items include candy, soft drinks, personal hygiene items, and entertainment products.

During our review of the sales taxes assessed by the Commissary, we found that sales tax is being assessed on Dial Translucent Soap purchases. However, this soap is an antibacterial personal care item, which is considered a nontaxable item. The taxes collected in the period from the sale of this soap totaled \$213.66. Therefore, inmates were overcharged by this amount.

**Recommendation:**

The commissary vendor should regularly verify that their sales tax assessments are in compliance with the applicable Comptroller's Office reference materials. We recommend that TCSO personnel periodically review the assessment of sales taxes as well.

**Management Response:**

Agreed. As the Auditors Office noted above, the TCSO Commissary Manager took corrective action immediately following the discovery of this tax discrepancy.

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<sup>1</sup> [http://comptroller.texas.gov/taxinfo/taxpubs/tx96\\_280.pdf](http://comptroller.texas.gov/taxinfo/taxpubs/tx96_280.pdf)

In addition, the vendor indicated that its inventory module is linked to the Texas Comptroller's Office such that any change in Texas law or policy regarding the taxability of any item is automatically updated in its ordering module.

TCSO Finance believes this system is generally reliable. Of the 11 of items initially flagged for tax status by the Audit Team, only one item was found to be classed erroneously as the other items were deemed to be nontaxable since the items were classified as "individual size portions of snack food," pursuant to Texas Tax Code Anno §151.314 (h)(2). [NOTE: It cannot be determined whether the erroneously classed item (Dial Antibacterial Soap) was the result of an error generated by the vendor, or an inaccuracy in the Comptroller's database on the date of sale.]

TCSO Finance will continue to request data from vendor to support sales and sales tax calculations on monthly invoices as warranted. TCSO Finance further agrees that it will consult with the Auditor to determine appropriate sample size and frequency for an ongoing review program.

#### **4. Tax Charged during Tax-Free Weekend**

Texas Administrative Code, Title 34, Part 1, Chapter, Sub Chapter O, Rule §3.365 states the following:

##### *Sales Tax Holiday--Clothing, Shoes and School Supplies*

(a) *Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise*

(1) *Clothing or footwear--An article of apparel that the article manufacturer designs for wear on or about the human body...*

(2) *Eligible item--For the purposes of this section, an article of clothing or footwear, a school backpack, or school supplies that are eligible for the sales tax exemption established under Tax Code, §151.326 and §151.327...*

(b) *Exempt sales:*

(1) *Sales or use tax is not due on the sale of an eligible item if:*

(A) *the sales price of the eligible item is less than \$100; and*

(B) *the sale takes place during the period that begins at 12:01 a.m. on the Friday before the fifteenth day preceding the fourth Monday in August, and ends at 12:00 a.m.(midnight) on the following Sunday.*

(iii) *In 2015, the sales tax holiday will begin at 12:01 a.m. on Friday, August 7 and end at 12:00 a.m. (midnight) on Sunday, August 9.*

The Texas sales tax holiday weekend was observed Friday, Saturday and Sunday, August 7-9, 2015. Most products priced under \$100 are exempted from sales tax during these weekends.

During our review of sales taxes for this tax holiday weekend, we noted that sales tax was still charged on items that were eligible for the tax holiday. Since items ordered on Saturdays and Sundays are posted on Mondays, along with Mondays orders, we were unable to qualify how many items were inappropriately taxed.

**Recommendation:**

Changes should be made to commissary systems to help ensure that sales taxes for applicable items are not assessed during sales tax holiday weekends.

**Management Response:**

We agree that sales tax for applicable items should not be assessed during sales tax holiday weekends. However, both technology and headcount constraints, as well as equitability concerns may limit the manner in which we are able to respond to this issue.

The TCSO Commissary does not operate on Saturdays and Sundays. Although an inmate can place, or make changes to, an order via our electronic ordering system on a Saturday or Sunday, the sales transaction does not occur until orders are processed on Monday. Therefore, any orders made over the weekend would not be subject to a tax-free status because they are not truly sales until consideration is paid.

That said, TCSO Finance agrees that the sale of some products (clothing and shoes) conducted on the Friday of a tax-free weekend should not be taxed.

However, this raises two key issues. First, each item impacted by the tax holiday would require a manual change in the Keefe ordering system timed in between the close of Thursday sales, but before the processing of Friday sales. All changes would then need to be reversed manually prior to the start of the Commissary's business day (approximately 5:30 a.m.) on the following Monday. The sales tax exceptions would then need to be documented, reconciled and maintained in order to confirm invoice accuracy and traceability for audit.

Second, commissary sales rotate by housing block and date. Therefore, relatively few inmates are sold commissary on any given Friday. This raises an equitability issue, since not all inmates would be eligible to participate in the no-tax Friday given the finite headcount of the commissary team.

Given the challenges in executing and tracking this one-off event, and the increased opportunity for errors that occurs when making manual changes to an automated system, TCSO Finance recommends the suspension of commissary sales during the annual tax-free holiday period.

**5. Sales Tax Calculation on Calling Cards**

Texas Administrative Code, Title 34, Part 1, Chapter, Sub Chapter O, Rule §3.286, (2) (B) states the following:

- (2) Sales and use tax due is debt of the purchaser; document requirements.*  
... (B) *The amount of sales and use tax due must be separately stated on the bill, contract, or invoice to the purchaser or there must be a written statement to the purchaser that the stated price includes sales or use tax*

We noted that the commissary order forms stated that "Prices do not include tax". However, taxes are included in the total price of the calling cards that are sold in the commissary. In addition, the billing support for the sale of calling cards does not itemize the amount of sales tax assessed for these cards. As denoted in the statute above, stated prices must be itemized to separate the tax

from the amount of sales, or a written statement that states price includes sales tax must be included.

In addition, the vendor calculates sales taxes on calling card sales by dividing the gross sales amount by one plus the tax rate and subtracting this amount from the gross sales amount. This would be the proper calculation if the order form stated that sales taxes were included in the sale price. Since the order form stated the opposite, the gross sales amount should have been multiplied by the tax rate to determine sales tax payable on these items. This difference in calculation methods resulted in approximately \$.07 less sales tax being remitted to the state per calling card sold. This totaled approximately \$101.05 in August of 2015 for example.

The following table details this computation:

Aug-15								
Calling Cards	Sold	Tax	Total with tax included	Taxable sales calculation in place	Total Tax Paid	Taxable Sales Calculated by Statue	Tax due to the state	Over/ Under
<b>TCCC</b>								
10.00	555	7.75%	\$5,550.00	\$5,150.81	\$399.19	\$5,980.13	\$430.12	(\$30.94)
20.00	356		\$7,120.00	\$6,607.89	\$512.11	\$7,671.80	\$551.80	(\$39.69)
50.00	83		\$4,150.00	\$3,851.51	\$298.49	\$4,471.63	\$321.63	(\$23.13)
<b>Total</b>			<b>\$16,820.00</b>	<b>\$15,610.21</b>	<b>\$1,209.79</b>	<b>\$18,123.55</b>	<b>\$1,303.55</b>	<b>(\$93.76)</b>
<b>TCJ</b>								
10.00	39	8.25%	\$390.00	\$360.28	\$29.72	\$422.18	\$32.18	(\$2.45)
20.00	26		\$520.00	\$480.37	\$39.63	\$562.90	\$42.90	(\$3.27)
50.00	5		\$250.00	\$230.95	\$19.05	\$270.63	\$20.63	(\$1.57)
<b>Total</b>			<b>\$1,160.00</b>	<b>\$1,071.59</b>	<b>\$88.41</b>	<b>\$1,255.70</b>	<b>\$95.70</b>	<b>(\$7.29)</b>
<b>Grand Total</b>				<b>\$16,681.80</b>	<b>\$1,298.20</b>	<b>\$19,379.25</b>	<b>\$1,399.25</b>	<b>(\$101.05)</b>
				Tax Discount	\$6.49			
				<b>Total Paid</b>	<b>\$1,291.71</b>		<b>Under Paid</b>	<b>(\$101.05)</b>

**Recommendation:**

This issue was corrected during the course of the audit.

**Management Response:**

Agreed. Immediately following identification of the issue, corrective action was taken.

**6. Market Price Comparison**

Local Government Code, Title 11, Subtitle B, Chapter 351, Sub Chapter C., Section 0415, (a) (f) states the following (emphasis added):

- (a) *The sheriff of a county or the sheriff's designee, including a private vendor operating a detention facility under contract with the county, may operate, or contract with another person to operate, a commissary for the use of the inmates committed to the county jail or to a detention facility operated by the private*

*vendor, as appropriate. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards.*

*(f) When entering into a contract under Subsection (a), the sheriff or the sheriff's designee shall consider the following:*

- (1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;*
- (2) the menu items offered by the provider and the price of those items;*
- (3) the value, as measured by a **best value standard**, and benefits to inmates and the commissary, as offered by the provider;*

As stated previously, a sheriff has the ability to contract with a vendor to operate a jail commissary in accordance with the rules set by the Texas Commission of Jail Standards. In addition, Section 0415 (f) of the Texas Local Government Code outlines five requirements to consider when entering into a contract under Section 0415 (a)<sup>2</sup>. The third requirement dictates how the vendor should value the items sold in the commissary. When a vendor and a sheriff are setting the prices of the items sold in the commissary, they are to consider the costs and benefits of these prices to both the inmates and to the commissary using the “best value standard” as a measure. The best value standard takes into consideration the purchase (wholesale) price and whether the goods meet the specifications set by the agency<sup>3</sup>.

The National Association of Convenience Stores (NACS), a widely accepted method of pricing retail convenience store items is often used by government agencies<sup>4</sup> to apply a markup to product costs. Each year, the NACS publishes a State of the Industry (SOI) Annual Report that includes gross margin percentages by product category that is often used to determine the mark-up percentage to be used for convenience items that year.

Using the literature from the TCJS, Texas Government Codes, and NACS, we determined it was reasonable to use convenience stores as a source to conduct a price comparison analysis on a sample of commissary items. We used a judgmental sampling technique to select a sample of commissary items that were likely to be sold at least at one of the convenience stores used in the analysis.

A sample of 20 (11%) of the products listed on the Travis County Commissary Order Form dated January 13, 2015 was used for the price comparison analysis. The comparison analysis was conducted using the average Retail Price per item from three convenience stores located in Travis County and was compared to the prices on the Commissary menu. Of the 20 sample items, nine items (45%) were sold in the commissary at a price higher than the average retail price. The vendor markup percentage of the nine items range from seven to fifty-eight percent more than the convenience store price. Combining the vendor markup percentage with the markup percentage set by NACS, the total markup percentage for these nine items ranged from between 73 to 164 percent over the product price. These nine items are detailed on the following page:

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<sup>2</sup> Texas Local Government Code Title 11, Subtitle B, Chapter 351, Sub Chapter C., Section 0415

<sup>3</sup> Texas Government Code §2155.074. BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES

<sup>4</sup> Department of Interior Technical Bulletin: 2014 Convenience Store Markup Percentages

NACS Category	Comm. Product	Average Retail price	Comm. Price	Variance	NACS 2014 mark-up percentage	Comm. mark-up percentage in excess	Total Mark-up percentage
Candy	SNICKERS MINIS 4.4OZ	\$2.26	\$3.00	\$0.74	90.00%	24.78%	114.78%
Candy	JOLLY RANCHERS ASST.	\$1.39	\$1.75	\$0.36	90.00%	20.57%	110.57%
Packaged Beverages (Non-alcoholic)	COLA 20-OZ	\$1.82	\$2.00	\$0.18	65.00%	8.83%	73.83%
Packaged Beverages (Non-alcoholic)	ORANGE 20-OZ	\$1.79	\$2.00	\$0.21	65.00%	10.50%	75.50%
Health & Beauty	TUMS 3ROLL PACK	\$1.26	\$3.00	\$1.74	106.00%	58.11%	164.11%
Health & Beauty	MEN SPEED STICK	\$3.44	\$3.70	\$0.26	106.00%	7.03%	113.03%
Health & Beauty	DOVE SOAP	\$2.24	\$3.50	\$1.26	106.00%	36.00%	142.00%
Packaged Sweet Snacks	CHOCOLATE MOON PIE	\$0.69	\$0.90	\$0.21	50.00%	23.33%	73.33%
Edible Grocery	FRESH CATCH TUNA	\$1.56	\$2.95	\$1.39	73.00%	47.23%	120.23%

**Recommendation:**

While the markup on the above nine items may appear to be in excess, there are no clearly defined rules or regulations on commissary prices. Because of this, it is up to the Sheriff and vendor to set prices at a reasonable level that will benefit the inmates and the Commissary, without taking advantage of the inmates and their friends/family that contribute to their inmate trust accounts.

We recommend that TCSO conduct a market price analysis for all commissary goods to determine the reasonableness of each item's pricing. Prices charged by the vendor should be adjusted as is deemed appropriate by this study.

**Management Response:**

We fully agree that commissary pricing must be reasonable, and provide the best value possible to the population served. However, we have some concerns regarding the Auditor's proposed methodology to achieve that end.

TCSO Finance conducted a Commissary Merchandise Pricing Evaluation in July of 2015, and made recommendations in accordance with our findings. Our evaluation compared a 10% sample

of commissary menu items to similarly sized and packaged items found at 5 area convenience stores. We made note of *both* positive and negative price variances and deviations from contract specifications.

Our evaluation yielded mixed results. We found that the average retail price for the items sampled was on average, 13% lower than the price offered by the vendor in our Commissary. However, we also found that in over 30% of the items sampled, the commissary price beat average retail price by up to 25%.

TCSO Finance will consider conducting a follow-up market price analysis based on the full inventory of commissary products rather than a sample size, but we note that this undertaking will require a significant encumbrance of staff time, and our ability to do so may be hindered by factors beyond our control. As the Auditor's Office noted, there were a total of 81 changes in product selection that occurred in a 4 month period of 2015. Because product selection changes will be driven by the preferences of the incoming Sheriff and the continued availability of a given sku# by the vendor, we cannot predict how many unique products will appear on the commissary menu during a given evaluation period.

Further, please note that the **Department of Interior Technical Bulletin: 2014 Convenience Store Markup Percentages** cautions that mark-up rate pricing is the preferred method only for convenience items that **do not** have a Manufacturer's Suggested Retail Price. In addition, it is important to note that the mark-up rate pricing assumes that a given product has an inherent base value, irrespective of how it is packaged. Given that packaging drives a significant part of a product's price, we find these base values unreliable. For example, a can of tuna may have an average retail price of \$1.56. A similar quantity of tuna packaged in a pouch may have an average retail price of \$2.49. Because we operate in an environment with different safety concerns than the general market, we cannot permit certain types of packaging in our facilities.

During our evaluation, we also determined that a number of the brands offered for sale in our Commissary are private labels trademarked by the vendor. This is significant because it gives the vendor the discretion to set the MSRP for these items. We are not aware of any guidance that would provide TCSO a basis to challenge a manufacturer's determination of MSRP.

We recognize that there are opportunities for improvement in this area. We also recognize that the achievement of a best value standard must begin with clearly defined performance objectives and standards of measurement established early in the procurement process, and delineated unambiguously in a contract's language. We have sought the assistance of the County Attorney's office to better align our contract with the vendor with our performance goals for Commissary services.

**7. Reduction of postage expense for Soap/Toothpaste/Envelope/Paper/Pencil (STEPP) Packs**  
Texas Administrative Code, Title 37, Part 9, Chapter 291, Rule 291.2, 1 (D) states the following:

*If requested, indigent inmates shall be furnished a reasonable amount of paper, pencils, envelopes, and stamps to correspond with their attorney(s) and the courts.*

*Additionally, indigent inmates shall be furnished paper, pencils, envelopes, and stamps to post at least three letters a week for all other correspondence.*

Currently, the Sheriff's Office issues STEPP packs to indigent inmates upon request. The STEPP Pack supplies the indigent inmate with three envelopes affixed with postage stamps (pre-stamped), three sheets of paper and one golf pencil. During the examination period 125,000 pre-stamped envelopes were purchased for a total cost of \$70,462.50. If the inmate does not mail the envelope, the postage is lost, as there is no mechanism to re-use issued envelopes.

**Recommendation:**

The Sheriff's Office should conduct an analysis of how many pre-stamped envelopes issued in STEPP packs are actually mailed on an annually basis and determine if there is a more efficient means of issuing envelopes. We determined that in some Texas counties, plain envelopes are issued to inmates, and their envelopes receive metered postage only when actually mailed.

**Management Response:**

In accordance with Texas Jail Standards, every inmate who requests an indigent care pack (on a weekly basis) is provided one on the date of their housing unit's commissary delivery date. Each care pack provided by TCSO consists of 2 bars of soap, a small toothpaste tube, 3 stamped envelopes, 3 sheets of paper and a small golf pencil.

By providing three sheets of paper and three stamped envelopes, TCSO is in compliance with Texas Administrative Code Rule 291.2 subsection D, which requires, "indigent inmates shall be furnished paper, pencils, envelopes, and stamps to post at least three letters a week for all other correspondence."

Per this Administrative rule, there is no requirement that an inmate who receives an indigent pack actually mail anything, but TCSO is clearly required to provide the necessary materials to allow them to mail three items per week. TCSO would note that when an inmate is transferred to another TCJ facility, all unused stamped envelopes are collected prior to transfer. If a stamped envelope is in a usable condition, it will be recirculated to another indigent inmate during a future STEPP pack delivery. Because we 1) only furnish the stamped envelopes to indigent inmates who make a request, 2) re-circulate unused envelopes, and 3) place orders/purchase stamped envelopes in order to take advantage of bulk pricing discounts, we believe the perception that many of these envelopes are wasted is largely without merit. However, we will give consideration to the legality and cost savings merits of the Auditor's suggestion on metering these envelopes.