

South Carolina Court Administration

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MEMORANDUM

To: Magistrates and Municipal Judges

From: Robert L. McCurdy, Assistant Director

Subject: Statutory provisions for the distribution of revenue generated by the magistrate courts and municipal courts

Date: June 22, 2016

This past legislative term there was legislation passed regarding the collection, distribution and reporting of court generated revenues. There were several temporary provisos that have been repeated in previous General Appropriations Acts and are repeated again in the 2016 - 2017 General Appropriations Act. These provisos are enforcement in nature and have no effect on the amounts of actual surcharges and assessments. Those provisos are listed below.

In addition, S.C. Code §14-1-240, which provides for the \$5 Criminal Justice Academy (CJA) fee, contains a sunset provision, and terminates June 30, 2016. Therefore, the \$5 CJA fee will no longer be assessed on criminal and misdemeanor traffic offense **convictions** after June 30, 2016. The conviction date is determinative of the application of the \$5 CJA surcharge, not the charging date. Accordingly, if a qualifying conviction is made prior to or on June 30, 2016, the \$5 surcharge will apply regardless of whether the money is collected prior to or after that date, such as in the case of scheduled time payments, or suspended/probationary sentences. If a conviction is obtained after that date, the \$5 CJA surcharge will not apply, regardless of when the charge was made.

Finally, Act No. 88 of 2015 added the "Transportation Network Act" to the S.C. Code at Chapter 23 of Title 58. Section 58-23-1680 (B) requires that 75% of each fine generated

from a violation the Transportation Network Company Act, must be remitted to the Office of Regulatory Staff to be used for enforcement operations. The County retains the remaining 25% of the civil fine. Violations of the Act are civil fines, and no assessments or surcharges apply. Magistrates have jurisdiction over contested violations under this section, and those judges are prohibited from suspending or reducing the statutory civil penalties.

The entire fees and assessments memorandum for fiscal year 2016 - 2017 will be posted on the Judicial Department website at www.sccourts.org under "Court News."

1. Effective July 1, 2016, Section 61.6 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act requires that every person placed on probation on or after July 1, 2003, who is represented by a public defender or appointed counsel, **shall** be assessed a fee of \$500.00. These funds shall be collected by the clerk on a monthly basis and forwarded to the Commission on Indigent Defense.

2. Effective July 1, 2016, section 61.7 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act provides a procedure for the collection, distribution, and reporting of a \$40 application fee for appointed counsel in civil actions. The Proviso requires that any person to whom counsel has been provided in any termination of parental rights, abuse and neglect, or any other civil court action, or the parents or legal guardians of a juvenile brought before any court, file application for court appointed counsel, and such representation creates a claim against the assets and the estate of the person who is provided counsel, or the parents or legal guardians of a juvenile provided counsel. Finally, this Proviso provides that any unpaid representation fees may be reduced to judgment against those individuals, parents, or legal guardians.

3. Effective July 1, 2016, Section 98.9 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act provides that if a municipality fails to submit the audited financial requirements required under § 14-1-208 to the State Treasurer within 13 months of the end of their fiscal year, the State Treasurer must withhold all State payments to that municipality until the required audited financial statement is received. Section 98.9 is provided below.

98.9. (TREAS: Penalties for Non-reporting) If the State Treasurer receives an audit report from either a county or a municipality that contains a "significant finding" related to court fine reports or remittances to the State Treasurer's Office, the requirements of proviso 117.55 shall be followed if an amount due is specified, otherwise the State Treasurer shall withhold 25% of all state payments to the county or municipality until the estimated deficiency has been satisfied.

If a county or municipality is more than 90 days delinquent remitting court fines, the State Treasurer shall withhold 25% of state funding for that county or municipality until all monthly reports are current.

After 90 days, any funds held by the State Treasurer's Office will be made available to the State Auditor to conduct an audit of the entity for the purpose of determining an amount due to the State Treasurer's Office, if any.

4. Effective July 1, 2016, Section 105.4 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act provides for the annual audits of court fees and fines by the State Auditor, and authorizes the State Auditor to consult with the State Treasurer to determine the jurisdictions to be audited. Section 105.4 is provided below.

105.4. (BCB/AUD: Annual Audit of Court Fees and Fines Reports) The State Auditor shall conduct a minimum of fifteen (15) audits annually of county treasurers, municipal treasurers, county clerks of court, magistrates and/or municipal courts as required by Section 14-1-210 of the 1976 Code and allowed by Proviso 118.4 of this act; however, the State Auditor shall not be required to spend more than the annual amount of \$250,000, received from the State Treasurer to conduct the said audits pursuant to Section 14-1-210 of the 1976 Code. The State Auditor may contract with one or more CPA/accounting firms to conduct the required audits. The State Auditor shall consult with the State Treasurer to determine the jurisdictions to be audited in the current fiscal year. Jurisdictions may be selected randomly or based on an instance in the current or previous fiscal year of failing to report, incorrectly reporting or under remitting amounts owed. The funds transferred to the State Auditor by the State Treasurer shall not be used for any purpose other than to conduct the described audits and report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed and/or mandated are properly collected and remitted to the State. Any unexpended balance on June thirtieth of the prior fiscal year shall be carried forward and must be expended for the same purpose during the current fiscal year. The State Auditor shall annually report by October 1, its findings of the jurisdictions audited to the Senate Finance Committee and the House Ways and Means Committee.

5. Effective July 1, 2016, Section 117.51 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act authorizes the State Office of Victim Assistance to conduct an audit on any county treasurer, municipal treasurer, county clerk of court, magistrate, or municipal court that the State Auditor has determined has not properly allocated revenue generated from court fines, fines, and assessments to the crime victim funds or has not properly expended crime victim funds pursuant to State law. Section 117.51 is provided below.

117.51. (GP: Assessment Audit / Crime Victim Funds) If the State Auditor finds that any county treasurer, municipal treasurer, county clerk of court, magistrate, or municipal court has not properly allocated revenue generated from court fines, fines, and assessments to the crime victim funds or has not properly expended crime victim funds, pursuant to Sections 14-1-206(B)(D), 14-1-207(B)(D), 14-1-208(B)(D), and 14-1-211(B) of the 1976 Code, the State Auditor shall notify the State Office of Victim Assistance. The State Office of Victim Assistance is authorized to conduct an audit which shall include both a programmatic review and financial audit of any entity or non-

profit organization receiving victim assistance funding based on the referrals from the State Auditor or complaints of a specific nature received by the State Office of Victim Assistance to ensure that crime victim funds are expended in accordance with the law. Guidelines for the expenditure of these funds shall be developed by the Victim Services Coordinating Council. The Victim Services Coordinating Council shall develop these guidelines to ensure any expenditure which meets the parameters of Title 16, Chapter 3, and Article 15 is an allowable expenditure. Any local entity or non-profit organization that receives funding from revenue generated from crime victim funds is required to submit their budget for the expenditure of these funds to the State Office of Victim Assistance within thirty days of the budget's approval by the governing body of the entity or non-profit organization. Failure to comply with this provision shall cause the State Office of Victim Assistance to initiate a programmatic review and a financial audit of the entity's or non-profit organization's expenditures of victim assistance funds. Additionally, the State Office of Victim Assistance will place the name of the non-compliant entity or non-profit organization on their website where it shall remain until such time as they are in compliance with the terms of this proviso. Any entity or non-profit organization receiving victim assistance funding must cooperate and provide expenditure/program data requested by the State Office of Victim Assistance. If the State Office of Victim Assistance finds an error, the entity or non-profit organization has ninety days to rectify the error. An error constitutes an entity or non-profit organization spending victim assistance funding on unauthorized items as determined by the State Office of Victims Assistance. If the entity or non-profit organization fails to cooperate with the programmatic review and financial audit or to rectify the error within ninety days, the State Office of Victim Assistance shall assess and collect a penalty in the amount of the unauthorized expenditure plus \$1,500 against the entity or non-profit organization for improper expenditures. This penalty plus \$1,500 must be paid within thirty days of the notification by the State Office of Victim Assistance to the entity or non-profit organization that they are in non-compliance with the provisions of this proviso. All penalties received by the State Office of Victim Assistance shall be credited to the General Fund of the State. If the penalty is not received by the State Office of Victim Assistance within thirty days of the notification, the political subdivision will deduct the amount of the penalty from the entity or non-profit organization's subsequent fiscal year appropriation.

6. Effective July 1, 2016, Section 117.109 of the Temporary Provisions of the 2016 - 2017 General Appropriations Act authorizes the SC Criminal Justice Academy to cease providing services to all law enforcement officers of law enforcement agencies encompassed within a political subdivision for failing to comply with proper remittance of court fee and fine money. Section 117.109 is provided below.

117.109 (GP: Remittance of Court Fee and Fine Money) County and city treasurers are required to remit to the State Treasurer set percentages of revenues generated by assessments imposed by 14-1-206(A), 14-1-207(A), 14-1-208(A). This remittance is required on a monthly basis by the 15th day of each month.

Should a county and/or city treasurer fail to make the required remittance, the SC Criminal Justice Academy shall cease providing services to all law enforcement officers of all law enforcement agencies encompassed within the political subdivision if they have failed to make remittance for two consecutive months in a fiscal year. The finance director shall certify by July first, under oath, that the county and/or city has remitted all funds or the SC Criminal Justice Academy shall withhold services until such time as remittance is made.

Copies of any of the legislation referenced above may be obtained by visiting the Legislative website at <http://www.scstatehouse.gov>.

The [enclosed memorandum](#) has been updated to reflect these amendments and discusses these changes in more detail. This memorandum supersedes prior memoranda from Court Administration on the collection and distribution of court generated revenue. It attempts to outline and explain the statutory procedures for collecting and distributing revenues in the circuit, family, magistrate, and municipal courts as well as the register of deeds. Examples of several of the distributions covered in the text of the memorandum appear in the attachments.

The actual distribution of revenue generated by the circuit, family, and magistrate courts is handled by the county treasurer in most cases. City treasurers disburse monies generated by the municipal courts. The treasurers are required to remit the funds to the State Treasurer monthly on such forms and in such manner as is required by him. The county treasurer can determine which funds should be transmitted to the State Treasurer by referring to the magistrates' South Carolina Revenue Report, which is generated by the South Carolina Judicial Department's Case Management System (CMS). The city treasurer can determine which funds should be transmitted to the State Treasurer by referring to the municipal courts' remittance form which is included as "[Attachment F](#)." For those cities that are on CMS, please refer to the Municipal Revenue Report, rather than Attachment F. Also, see "[Attachment K](#)" for a schedule of civil filing fees collected in magistrate's court. "[Attachment L](#)" includes a list of approved expenditures for victims' funds. Also, examples of specific fines and applicable assessments/surcharges are included as "[Attachment M](#)." A list of State parking laws exempt from assessments can be found at "[Attachment N](#)" of the enclosed memorandum. The recommended roadside bond list, which contains numerous crimes and offenses and applicable assessments, is found at "[Attachment P](#)." Finally, "[Attachment O](#)" contains the judge's total calculator.

In this discussion of the distribution of funds, the general rule for each court is stated and followed by an explanation of the statutory exceptions for distribution. The outline which precedes the memorandum summarizes its contents. **Please note in the memorandum specific time guidelines pertaining to the transmittal of these revenues. Strict, prompt adherence to the reporting guidelines is required.**

Please provide copies of this memorandum to all members of your staff whose duties relate to the collection or distribution of court revenues. If you or your staff has any questions concerning the collection or distribution of revenue, do not hesitate to contact this office.

Cc: Municipal Treasurers

STATUTORY PROVISIONS FOR THE DISTRIBUTION OF REVENUE GENERATED
BY THE MAGISTRATES AND MUNICIPAL COURTS

Contents

I.	Magistrates Court	p. 4
A.	General rule for distribution of revenue	
	1. Magistrates' criminal fines, penalties or forfeitures, Section 22-1-90	
	2. Assessment, Section 14-1-207	
	3. Surcharge on all convictions, Section 14-1-211	p. 5
	4. Surcharge on all convictions, Law Enforcement Funding, Section 14-1-212	p. 6
	5. Surcharge on convictions of Sections 56-5-2930 (DUI) and 56-5-2933 (DUAC), Section 14-1-211(A)(2)	p. 7
	6. DUI assessment, Section 56-5-2995(A)	
	7. Drug Court Surcharge, Section 14-1-213	
	8. Payment of the fine and assessment by installments, Section 14-1-209(B) and 3% collection cost charge, Section 14-17-725	p. 8
	9. Boating Under the Influence Breath Test Fee, Section 50-21-114	
	10. DUI, DUAC Breath Test Fee, Section 56-5-2950(E)	
	11. Administrative court costs in fraudulent check cases, Sections 34-11-70(b) and (c), and 34-11-90(c) and (d)	p. 9
	12. Conditional Discharge fee, Section 44-53-450(C)	
B.	Exceptions to the general rule	p. 9
	1. DUI and DUAC, \$100.00 Pull-Out, Sections 56-5-2930(F) and 56-5-2933(F)	p. 10
	2. DUS, \$100.00 Pull-Out, Section 56-1-460(C)	
	a. Exception, Section 12-37-2740, DUS for Failure to Pay Property Tax	
	3. Bond estreatments, Section 17-15-260	
	a. Payment in installments, Section 38-53-70	p. 11
	4. Insurance Fraud, Section 38-55-560	
	5. Shellfish Law Violations, Section 44-1-152	
	6. Game or fish law violations, Sections 50-9-910, 50-5-25, 50-21-160, and 50-23-220	
	a. Exception: Criminally Negligent Use of Firearms/Archery Tackle, Section 50-1-85	p. 13
	7. Axle weight and gross weight violations, Section 56-5-4160	

8. Carriers of household goods and hazardous waste for disposal, Section 58-23-590(E)
9. Tattooing regulation violation, Section 44-34-100(G)
10. Seatbelt, County Ordinance Parking Violations, Section 56-5-6520 p. 14
11. Littering, Section 16-11-700
12. Fees and Fines assessed by the Aeronautics Commission, Section 55-1-7
13. Transportation Network Company Act Violations, Section 58-23-1680(B)
14. Cases transferred from the general sessions court, Section 22-3-545 p. 15
- C. Magistrates' civil fees and costs p. 18
 1. Schedules provided in Sections 8-21-1010 and 8-21-1060
 - a. Filing Fee Add-Ons, Section 22-3-340
 2. Exception, Section 8-21-1020 p. 19
 3. Exception, Section 20-4-40(f)
 4. Exception, Section 16-3-1750(D)
 5. Exception, Section 27-37-155 (B)(5)
 6. Other miscellaneous fees
- II. Municipal Courts p. 20
 - A. General Rules for Distribution of Revenue
 1. Municipal Judges' criminal fines, penalties, or forfeitures, Section 14-25-85
 2. Magistrates serving as a municipal judge, Sections 14-25-25 and 22-1-70; Exception
 3. Assessment, Section 14-1-208
 4. Surcharge on all convictions, Section 14-1-211 p. 22
 5. Surcharge on all convictions, Law Enforcement Funding, Section 14-1-212 p. 23
 6. Surcharge on convictions of Sections 56-5-2930 (DUI) and 56-5-2933 (DUAC), Section 14-1-211(A)(2)
 7. DUI assessment, Section 56-5-2995(A)
 8. Drug Court Surcharge, Section 14-1-213 p. 24
 9. Boating Under the Influence Breath Test Fee, Section 50-21-114
 10. DUI, DUAC Breath Test Fee, Section 56-5-2950(E)
 11. Administrative court costs in fraudulent check cases, Sections 34-11-70(b) and (c), and 34-11-90(c) and (d)
 12. Conditional Discharge fee, Section 44-53-450(C) p. 25

13. Payment of the fine and assessment by installments, Section 14-1-209 and 3% collection cost charge, Section 14-17-725
- B. Exceptions to the general rule p. 26
 1. DUI and DUAC, \$100.00 Pull-Out, Sections 56-5-2930(F) and 56-5-2933(F)
 2. DUS, \$100.00 Pull-Out, Section 56-1-460(C)
 - a. Exception, Section 12-37-2740, DUS for Failure to Pay Property Tax
 3. Bond estreatments, Section 17-15-260 p. 27
 - a. Payment in installments, Section 38-53-70
 4. Insurance Fraud, Section 38-55-560
 5. Shellfish Law Violations, Section 44-1-152
 6. Game or fish law violations, Section 50-9-910, 50-5-25, 50-21-160, and 50-23-220 p. 28
 - a. Exception: Criminally Negligent Use of Firearms/Archery Tackle, Section 50-1-85 p. 29
 7. Axle weight and gross weight violations, Section 56-5-4160
 8. Carriers of household goods and hazardous waste for disposal, Section 58-23-590(E)
 9. Tattooing regulation violation, Section 44-34-100(G) p. 30
 10. Seatbelt, Municipal Ordinance Parking Violations, Section 56-5-6520
 11. Littering, Section 16-11-700
 12. Fees and Fines assessed by the Aeronautics Commission, Section 55-1-7
 13. Cases transferred from the general sessions court, Section 22-3-545 p. 31

I. Magistrates Court

A. General Rule for Distribution of Revenue

1. Magistrates' criminal fines, penalties or forfeitures, Section 22-1-90

Generally, the revenue generated from criminal fines, penalties, and forfeitures in magistrates court is retained by the county. However, you may routinely encounter fourteen exceptions to this rule. These exceptions, which are discussed below, are DUI and DUAC, Section 56-5-2930(F) and 56-5-2933(F); DUS, Section 56-1-460(C); bond estreatments, Section 17-15-260; insurance fraud, Section 38-55-560; shellfish violations, Section 44-1-152; game or fish law violations, Sections 50-9-910, 50-5-25 and 50-23-220; axle weight gross weight violations, Section 56-5-4160; carriers of household goods and hazardous waste for disposal, Section 58-23-590(E); tattooing regulation violations, Section 44-34-100(G); seatbelt, parking violations, Section 56-5-5620; littering, Section 16-11-700; cases transferred from general sessions court, Section 22-3-545; Conditional Discharge Fee, Section 44-53-450(C); cases disposed of on behalf of the

Aeronautics Commission, Section 55-1-7; and Transportation Network Company Act violations, Section 58-23-1680 (B).

Magistrates and are required to turn over to the County Treasurer all criminal fines, penalties or forfeitures, collected during the preceding month, on the first Wednesday or within ten days thereafter, during each successive month. Likewise, a full and accurate statement of all criminal monies collected must also be furnished to the county auditor. **Please see Proviso 117.51 in the cover memoranda concerning possible action by the State Auditor for failure to timely transmit court generated revenues.**

2. Assessment, Section 14-1-207

Section 14-1-207 requires any person who is convicted, pleads guilty or nolo contendere to, or forfeits bond for an offense tried in magistrates court to pay an assessment in an amount equal to 107.5% of the fine actually imposed. If a portion of the fine is suspended, the assessment is calculated on the amount of the fine that is not suspended. This assessment applies to county ordinances also. **The assessment cannot be waived, reduced, or suspended.** The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510, and 56-5-2530, or another State law, municipal ordinance, or county ordinance restricting parking in a prohibited zone or in a parking place clearly designated for handicapped persons.

The amount collected as assessments must be forwarded each month to the County Treasurer, who shall retain 11.16% of the revenue generated by the assessment for the county, and transmit the remaining 88.84% by the fifteenth of each month to the State Treasurer on forms and in a manner prescribed by him.

The 11.16% retained by the county must be used exclusively for providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. Any funds retained by the County Treasurer which are not used for victim services at the end of the fiscal year must be carried forward to the next year and used exclusively for services for victims of crimes. All unused funds must be separately identified in the counties adopted budget as funds unused and carried forward from previous years.

To ensure that fines and assessments imposed pursuant to this section and section 14-1-209(B) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed by each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting and distribution of fines and assessments from the point of collection to the point of distribution and a supplementary schedule indicating all fines and assessments collected by the clerk of the magistrate court, the amount of fines and assessments retained by the

County Treasurer, and the amount fines and assessments remitted to the State Treasurer, the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward. Within thirty days of the issuance of the audited financial statement, the county must submit a copy to the State Treasurer, and a statement of the actual cost associated with the preparation of supplementary schedule required in this subsection, 14-1-207(E). Upon submission to the State Treasurer, the county may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the supplementary schedule, not to exceed \$1,000 each year.

The clerk of court and County Treasurer shall keep records of fines and assessments required to be reviewed under this section in the format determined by the county council. See "[Attachment L](#)" for possible expenditures of victims' funds as recommended by the State Office of Victim's Assistance.

3. Surcharge on all convictions, Section 14-1-211

In addition to all other assessments and surcharges, a twenty-five dollar surcharge is imposed on all convictions obtained in magistrates court, including county ordinances. The surcharge must not be imposed on convictions for misdemeanor traffic offenses. However, the surcharge applies to all violations of Section 56-5-2930, driving under the influence of liquor, drugs, or like substances, and Section 56-5-2933, DUAC. **No portion of the surcharge may be waived, reduced, or suspended.** The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510, and 56-5-2530, or another State law, municipal ordinance, or county ordinance restricting parking in a prohibited zone or in a parking place clearly designated for handicapped persons.

The revenue collected pursuant to Section 14-1-211 must be retained by the jurisdiction which heard or processed the case and paid to the County Treasurer, for the purpose of providing services for victims of crimes, including those required by law. Any funds retained by the County Treasurer pursuant to this Section must be deposited into a separate account for the exclusive use for all activities related to victims services. For the purpose of funds allocation and expenditure, these funds are a part of the general fund of the county. These funds must be appropriated for the exclusive purpose of providing victim as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds may be used for, but are not limited to, salaries, equipment that includes computer equipment and Internet access, or other expenditures necessary for providing services to crime victims. All unused funds must be carried forward from year to year and used exclusively for victim services. All unused funds must be separately identified in the county's adopted budget as funds unused and carried forward from previous years.

The surcharge revenue retained by the county must be reported to the State Treasurer monthly in a form and manner required by that office. To insure that surcharges imposed pursuant to Section 14-1-211(A) are properly collected and remitted to the County Treasurer, the annual independent external audit required to be performed by each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting and distribution of surcharges from the point of collection to the point of distribution and a supplementary schedule detailing the amount of surcharges collected at the court level, the amount retained by the county, the amount of funds allocated to victims' services by fund source, how those funds were expended, and any carry forward balances. See "[Attachment L](#)" for possible expenditures of victims' funds as recommended by the State Office of Victim's Assistance.

4. Surcharge on all convictions, Law Enforcement Funding, Section 14-1-212

In addition to all other assessments and surcharges, a twenty-five dollar surcharge is levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in magistrates court for misdemeanor traffic offenses or non-traffic (criminal) convictions, including county ordinances. **No portion of the surcharge may be waived, reduced, or suspended.** The surcharge does not apply to state or local laws regulating parking. Therefore, the \$25.00 surcharge should not be added to fines resulting from a conviction of any parking regulations.

The revenue collected from the surcharge must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 14-1-212 (C) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations and a local jurisdiction is required to participate in and cooperate fully with the examination.

5. Surcharge on convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC), Section 14-1-211(A)(2)

Section 14-1-211(A)(2) requires that a one hundred dollar surcharge be imposed on all convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC). **No portion of the surcharge may be waived, reduced, or suspended.** These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer. The State Treasurer shall put these funds in a separate account to be used for spinal cord research at MUSC.

All one-time operating and administrative costs for county and municipal government related to computer upgrades or programming related to these surcharges shall be deducted from the revenue collected pursuant to (A)(2) before remission to the State Treasurer.

6. DUI assessment, Section 56-5-2995(A)

In addition to the assessment and surcharges discussed in I.A.2., I.A.3., I.A.4. and I.A.5. above, a twelve dollar assessment must be imposed for all convictions of Section 56-5-2930, DUI, or Section 56-5-2933, DUAC, obtained in magistrates court. These funds should be clearly designated and transferred to your County Treasurer for remittance to the State Treasurer for disbursement pursuant to Section 14-1-201.

7. Drug Court Surcharge, Section 14-1-213

In addition to all other assessments and surcharges required to be imposed by law, during fiscal year 2016 - 2017, a one hundred fifty dollar surcharge is imposed on all misdemeanor drug offense convictions in the magistrate court. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected pursuant to this Section must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 14-1-213 (D) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations and a local jurisdiction is required to participate in and cooperate fully with the examination.

8. Payment of the fine and assessment by installments, Section 14-1-209(B) and 3% collection cost charge, Section 14-17-725

Section 14-1-209 provides guidance when the fine and assessment are paid in installments. The intent of Section 14-1-209(B) is that each installment payment be allocated on a pro rata basis to each applicable fine, assessment, and surcharge. Prior to making these computations, you must determine what assessments and surcharges may apply (conviction surcharge, law enforcement funding fee, DUI assessments, etc.). The prorated 107.5% assessment amount must be divided, with 88.84 being transmitted to the state, and 11.16 being retained by the county for victims' services. Funds collected as installments should not be held until full payment is received but must be remitted each month to the County Treasurer. To compensate for any slight shift in funds, the division of the final installment payment should be adjusted so that the portion collected as the assessment does not exceed the amount originally imposed.

When an individual pays the fine and/or assessment through installments, Section 14-17-725 provides that the magistrate must collect an additional 3% of the installment payment as a collection cost charge. The 3% should be calculated and added to the original fine amount and then prorated and allocated as discussed above. The collection cost is transmitted to the County Treasurer for deposit to the county general fund. An example of the installment payment process may be viewed in "[Attachment B](#)."

9. Boating Under the Influence Breath Test Fee, Section 50-21-114

Pursuant to Section 50-21-114, any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 50-21-112 (BUI) or 50-21-113 (BUI Per Se), and who was administered a breathalyzer examination at the time of arrest, must be assessed an additional fee of \$50.00 at the time of sentencing. This fee must be forwarded by the County Treasurer to the State Treasurer and credited to the General Fund of the State to defray any costs incurred by SLED and individuals and institutions attaining the samples forwarded to SLED.

10. DUI, DUAC Breath Test Fee, Section 56-5-2950(E)

Section 56-5-2950(E) requires that any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 56-5-2930 (DUI) or 56-5-2933 (DUAC), and who was administered a breathalyzer examination at the time of arrest, must be assessed an additional fee of \$25.00 at the time of sentencing. This fee must be forwarded to the County Treasurer and to the State Treasurer, and placed by the Comptroller General into a special account to be used by SLED to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

11. Administrative court costs in fraudulent check cases, Sections 34-11-70(b) and (c), and 34-11-90(c) and (d)

In most fraudulent check cases, the court is entitled to collect reasonable administrative court costs not to exceed forty-one dollars. This amount is collected from the prosecuting witness if the court dismisses the case for want of prosecution, Section 34-11-70(b), or from the defendant if the court dismisses the case upon satisfactory proof of restitution, Section 34-11-70(c). If the case goes to trial and the defendant is convicted, the cost shall be collected, Section 34-11-90(d), even if the sentence is required to be suspended as provided in Section 34-11-90(c).

Whenever there is a conviction, the assessment discussed in I.A.2., I.A.3. and I.A.4. above must be collected along with the fine and administrative court cost. If the fine was ultimately suspended, the assessment is computed and collected based on the amount of the fine that is not suspended.

12. Conditional Discharge fee, Section 44-53-450(C)

Before a person may be discharged and proceedings dismissed in a Magistrate court as a result of the successful completion of a conditional discharge as defined in 44-53-450, the person must pay a fee of one hundred fifty dollars. No portion of the fee may be waived, reduced, or suspended, except in the case of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee.

The revenue collected pursuant to this subsection must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt, who shall forward the funds to the Prosecution Coordination Commission. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

B. Exceptions to the general rule

We have identified fourteen exceptions that may frequently be encountered to the general rule that the county receives all of the revenue from criminal fines, penalties, and forfeitures in magistrates court, or to the general rule that assessments and surcharges be added to criminal fines.

1. DUI and DUAC, \$100.00 Pull-Out, Sections 56-5-2930(F) and 56-5-2933(F)

Sections 56-5-2930(F) and 56-5-2933(F) require that \$100.00 of each fine imposed pursuant to Sections 56-5-2930 (DUI) and 56-5-2933 (DUAC) must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. This applies to first and subsequent offenses of those statutes. The remainder of the fine shall be retained by the jurisdiction that disposed of the case. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

2. DUS, \$100.00 Pull-Out, Section 56-1-460 (C)

Section 56-1-460(C) as it relates to Driving under Suspension requires that \$100.00 of each fine imposed pursuant to that section must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. The remainder of the fine shall be forwarded to the County Treasurer and placed in the County General Fund. This applies to first and subsequent offenses of those statutes. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

a. Exception, Section 12-37-2740, DUS for Failure to Pay Property Tax

An exception to the rule requiring \$100 of each driving under suspension fine be "pulled out" for the benefit of the Department of Public Safety is found at Section 12-37-2740, Driving Under Suspension for Failure to Pay Property Taxes. That section contains specific penalty provisions for such a violation which are separate and distinct from the penalties provided in Section 56-1-460. When handling those cases, reference should be made to that statute for the penalty requirements, and the \$100 "pull out" does not apply.

3. Bond estreatments, Section 17-15-260

Section 17-15-260 provides that the funds resulting from a bond estreatment are divided as follows: 25% to the state general fund, 25% to the solicitor's office, and 50% to the county general fund. If the case was originated by a municipality, the estreated funds are divided as follows: 25% to the state general fund, 25% to the solicitor's office, 25% to the county general fund, and 25% to the municipality. The state's portion should be turned over to the County Treasurer on a monthly basis for transmittal to the State Treasurer.

a. Payment of estreatment in installments, Section 38-53-70

Section 38-53-70 provides that the court may allow the surety to pay an estreatment in installments for a period of up to six months. However, the surety must pay a handling fee to the court in an amount equal to 4% of the value of the bond. Per Order of the Chief Justice dated November 14, 2002, the 4% handling fee should be dispersed with the other monies estreated pursuant to I.A.3. above.

4. Insurance fraud, Section 38-55-560

Section 38-55-560 requires that 100% of all criminal fines generated from violations of Section 38-55-170 or 540 must be transmitted to the Insurance Fraud Division of the Office of the Attorney General. The statute provides that SLED and the Attorney General divide these funds equally, and those two agencies have entered into a written agreement whereby the Attorney General receives the funds and then makes the proper distribution to SLED. These funds should be clearly noted on your report to the county so that the proper amount of funds can be transmitted to Insurance Fraud Division, Office of the Attorney General, P. O. Box 11549, Columbia, South Carolina 29211. The assessment discussed in I.A.2., I.A.3. and I.A.4. should be collected on all criminal

insurance fraud violations. See "[Attachment I](#)" for use in identifying these funds to the County Treasurer.

5. Shellfish Law Violations, Section 44-1-152

Section 44-1-152 requires that criminal fines generated from violations of State shellfish laws found in Title 44, or regulations promulgated by DHEC, must be transmitted to the County Treasurer monthly. One-third of the fine must be placed in the County General Fund. The remaining two-thirds is split, with one-half remitted to the State to be deposited in the general fund, and one-half to be remitted to DHEC to be used in enforcing shellfish laws and regulations. These funds should be clearly noted on your report to the county so that the proper amount of funds can be transmitted to Shellfish Enforcement--J0403S976000, SCDHEC Bureau of Finance, Accounts Receivable Division, 2600 Bull Street, Columbia, South Carolina 29201. See "[Attachment J](#)" for use in transmitting these funds to the County Treasurer. The assessments discussed in I.A.2., I.A.3. and I.A.4 above should also be collected on these violations.

6. Game or fish law violations, Sections 50-9-910, 50-5-25, 50-21-160, and 50-23-220

Section 50-9-910(A) requires that 100% of all revenues from fines and forfeitures from violations of Chapters 1 through 16 of Title 50 (Fish, Game, and Wildlife), except for violations of marine resources laws, shall be transmitted to the County Treasurer monthly. The treasurer then transmits the funds to the Department of Natural Resources, Accounting Department by the 15th of each month to be credited to the County Game and Fish Fund in the county in which the offense occurred. The remittances shall be accompanied by a statement showing the name of all persons fined, the amount of each fine, the summons number and the court in which each fine was collected.

Section 50-5-25 provides for the distribution 100% of all revenues from fines and forfeitures for violations of marine resource laws. Similar to the distribution discussed in the paragraph immediately above, that section provides that one hundred percent of these fines shall be transmitted to the County Treasurer monthly and forwarded to the Department of Natural Resources by the 15th of each month for deposit in the County Game and Fish Fund for the county in which the offense occurred.

Section 50-21-160 provides that 75% of all fine revenues generated pursuant to offenses contained within Chapter 21 of Title 50 shall be forwarded to the County Treasurer monthly, and sent to the Wildlife Department, Natural Resource Enforcement Division by the 15th of each month. 25% of those fines must be forwarded to the County Treasurer and retained by the County in which the fine is levied, and placed in the County General Fund.

Section 50-23-220 requires that 100% of all revenues received and collected pursuant to Chapter 23 of Title 50 (Titling of Watercraft and Outboard Motors) shall be

forwarded to the County Treasurer on a monthly basis, who shall forward these funds to the State Treasurer to be placed in a special fund for the Wildlife Department to be used for expenses in administering the provisions of Chapter 23, or for any purpose related to the mission of the Department.

Section 50-9-910(C) requires that 100% of revenue from fines and forfeitures for violations of "other sections" of this Title and for "all other offenses investigated or prosecuted by the Department" must be forwarded to the County Treasurer monthly, who shall then forward them to the Department to be used exclusively for law enforcement operations. The phrase "other sections" has been interpreted to include violations of Chapters 18, 19, 25, and 26 of Title 50, since none of the Sections described above affect these Chapters. The phrase "all other offenses investigated or prosecuted by the Department" has been interpreted to include the offenses referenced in Section 50-3-410, as well as any other non-Title 50 offenses investigated or prosecuted by the Department.

All game or fish law violations are subject to the assessments set forth in I.A.2., I.A.3. and I.A.4. above. The Department of Natural Resources monitors the disposition of all wildlife cases. Should a game or fish law violation be disposed of in your court, you may expect to receive an invoice similar to the one marked "[Attachment G](#)".

- a. Exception: Criminally Negligent Use of Firearms/Archery Tackle, Section 50-1-85

An exception to the general distribution of Title 50 offenses is found in Section 50-1-85, regarding Criminally Negligent Use of Firearms/Archery Tackle. That statute requires that 100% of all fines collected from a violation of the statute must be remitted to the State Treasurer to be deposited into the South Carolina Victim's Compensation Fund. These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the State Treasurer for disbursement into the Victim's Compensation Fund. The assessments discussed in I.A.2., I.A.3. and I.A.4. above should be collected on violations of Section 50-1-85 violations, and forwarded through your County Treasurer to the State Treasurer for distribution to the normal recipients.

7. Axle weight and gross weight violations, Section 56-5-4160

Section 56-5-4160 provides that all fines collected for violating the weight limits set by Section 56-5-4130 or Section 56-5-4140 must be deposited within 45 days in the account designated the "Size and Weight Revitalization Program Fund for Permanent Improvements". These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the State Transport Police at 10311 Wilson Boulevard, P.O. Box 1993, Blythewood, SC 29016. The

assessment discussed in I.A.2. and I.A.4., but not I.A.3., above should be collected on weight violations.

8. Carriers of household goods and hazardous waste for disposal, Section 58-23-590(E)

Section 58-23-590(E) requires that 75% of each fine generated from a violation of Section 58-23-40 be deposited with the Office of Regulatory Staff. The county retains the remaining 25% of the fine. These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the Office of Regulatory Staff, 1401 Main Street, Suite 900, Columbia, South Carolina, 29201. The assessment discussed in V.A.2., V.A.3. and V.A.4. above should be collected on these violations.

9. Tattooing Regulation Violation, Section 44-34-100(G)

Chapter 34 of Title 44 of the Code legalizes and regulates tattooing in this State. Section 44-34-100(G) provides that all criminal fines generated from a violation of that Chapter, or from Section 16-17-700, be remitted to the Department of Health and Environmental Control. These revenues should be forwarded to your County Treasurer monthly, along with a list of the disposed cases, who shall remit them to the following address: DHEC, Bureau of Health Licensing, Attention: Dennis Gibbs, 2600 Bull Street, Columbia, SC, 29201. The assessment discussed in I.A.2., I.A.3. and I.A.4. above should be collected on these violations.

10. Seatbelt, County Ordinance Parking Violations, Section 56-5-6520

Pursuant to Section 56-5-6540, no assessments or surcharges shall be added to mandatory seatbelt law violations. Therefore, the assessments discussed in I.A.2., I.A.3. and I.A.4. above should **not** be collected on seatbelt violations. The offense requires a \$25 fine for each violation, which should be forwarded to your County Treasurer. Also, no assessments or surcharges should be added to county or municipal ordinances relating to timed or chalked parking violations.

11. Littering, Section 16-11-700

Pursuant to 16-11-700, individuals convicted of littering must be sentenced to a specified number of hours of litter gathering labor as a part of the sentence, which may not be suspended. The statute provides that the defendant may elect to pay an additional monetary penalty of five dollars per hour instead of the required litter gathering. That amount must be added to the original fine imposed prior to adding the assessments and surcharges discussed in I.A.2., I.A.3. and I.A.4. above. Moneys collected in lieu of litter gathering must be remitted to the county of conviction and may be used for litter gathering supervision.

12. Fees and Fines assessed by the Aeronautics Commission, Section 55-1-7

Section 55-1-7 requires that 100% of all fees and fines collected from a violation contained in any Chapter of Title 55 of the South Carolina Code of Laws, relating to the criminal and civil enforcement provisions of the Aeronautics Commission, must be remitted to the State Treasurer to be deposited into the State Aviation Fund. These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the State Treasurer for disbursement into the State Aviation Fund. The assessments discussed in I.A.2., I.A.3. and I.A.4. above should be collected on criminal violations of Title 55, but not civil violations.

13. Transportation Network Company Act Violations, Section 58-23-1680(B)

Section 58-23-1680 (B) requires that 75% of each fine generated from a violation of Title 58, Chapter 23 Article 16, regarding the Transportation Network Company Act, must be remitted to the Office of Regulatory Staff to be used for enforcement operations. The County retains the remaining 25% of the civil fine. These funds should clearly be noted on your report to the County Treasurer, so that the proper amount of fines can be remitted to the Office of Regulatory Staff, 1401 Main St., Suite 900, Columbia, SC 29201. Violations of Article 16 are civil fines, and no assessments or surcharges apply. Magistrates have jurisdiction over contested violations under this section, and those judges are prohibited from suspending or reducing the statutory civil penalties.

See "[Attachment B](#)" for examples of the above mentioned collections and disbursements. Except for the revenue from bond estreatments which should be identified in a separate transmittal, the docket sheets may be used to transmit the funds described above to the County Treasurer. The South Carolina Revenue Report generated by the South Carolina Judicial Department's Case Management System may also be used to transmit these funds to your County Treasurer.

14. Cases transferred from the general sessions court, Section 22-3-545

a. General Rule

i. Disbursement and division of revenue, Sections 14-1-205 and 14-17-720

Section 22-3-545 establishes a procedure for transferring certain cases from the general sessions court to the magistrates court for disposition and provides that the revenue generated by these cases shall be distributed as if the fines had been imposed in the circuit court. The general rule for distribution of revenue generated from fines in general sessions court is that, pursuant to Section 14-1-205, 56% of all such money (after any payments to informants pursuant to Section 14-17-720) shall be paid over to the county. The remaining 44% of the revenues generated from fines must be forwarded each

month to the County Treasurer for remittance to the State Treasurer on forms and in a manner prescribed by him.

The procedure for transferring cases pursuant to Section 22-3-545 does not affect the cases that are remanded to the magistrate court for disposition on a lesser included offense within the court's jurisdiction.

ii. Assessment, Section 14-1-206(A)

Section 14-1-206 requires any person who is convicted, pleads guilty or nolo contendere to, or forfeits bond for an offense tried in general sessions court to pay an assessment in an amount equal to 107.5% of the fine actually imposed. If a portion of the fine is suspended, the assessment is calculated on the amount of the fine required to be paid.

The assessment cannot be waived, reduced, or suspended. The amount collected as assessments must be forwarded each month to the County Treasurer, who shall retain 35.35% of the revenue generated by the assessment for the county, and transmit the remaining 64.65% by the fifteenth of each month to the State Treasurer on forms and in a manner prescribed by him. The 35.35% retained by the county must be used for the provision of services for victims including those required by law.

iii. Conviction Surcharge, Section 14-1-211

In addition to all other assessments and surcharges, a one hundred dollar surcharge is imposed on all convictions obtained in general sessions court. The surcharge must not be imposed on convictions for misdemeanor traffic offenses. However, the surcharge applies to all violations of Section 56-5-2930, driving under the influence of liquor, drugs, or like substances, and Section 56-5-2933, DUAC. **No portion of the surcharge may be waived, reduced, or suspended.**

The revenue collected pursuant to Section 14-1-211 must be retained by the jurisdiction which heard or processed the case and paid to the County Treasurer, for the purpose of providing services for victims of crimes.

iv. Surcharge on all convictions, Law Enforcement Funding, Section 14-1-212

In addition to all other assessments and surcharges, a twenty-five dollar surcharge is levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in general sessions court. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected from the surcharge must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 14-1-212 (C) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations and a local jurisdiction is required to participate in and cooperate fully with the examination.

v. Surcharge on convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC), Section 14-1-211(A)(2)

Section 14-1-211(A)(2) requires that a one hundred dollar surcharge be imposed on all convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC). **No portion of the surcharge may be waived, reduced, or suspended.** These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer. The State Treasurer shall put these funds in a separate account to be used for spinal cord research at MUSC.

vi. DUI assessment, Section 56-5-2995(B)

In addition to the assessments and surcharges discussed in I.B.7.a.ii. and I.B.7.a.iii. above, an additional assessment of twelve dollars must be added to all convictions for Section 56-5-2930, DUI, Section 56-5-2933, DUAC, and for Section 56-5-2945, Felony DUI. These funds should be transferred to your County Treasurer for transmittal to the State Treasurer for disbursement pursuant to Section 14-1-201.

vii. Drug Court Surcharge, Section 14-1-213

In addition to all other assessments and surcharges required to be imposed by law, during fiscal year 2016 - 2017, a one hundred fifty dollar surcharge is imposed on all misdemeanor and felony drug offense convictions in the court of general sessions. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected pursuant to this Section must be retained by the jurisdiction which hear or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 14-1-213 (D) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations and a local jurisdiction is required to participate in and cooperate fully with the examination.

viii. Boating Under the Influence Breath Test Fee, Section 50-21-114

Pursuant to Section 50-21-114, any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 50-21-112 (BUI) or 50-21-113 (BUI Per Se), and who was administered a breathalyzer examination at the time of arrest, must be assessed an additional fee of \$50.00 at the time of sentencing. This fee must be forwarded by the County Treasurer to the State Treasurer and credited to the General Fund of the State to defray any costs incurred by SLED and individuals and institutions attaining the samples forwarded to SLED.

ix. Payment of the fine and assessment by installments, Section 14-1-209(A) and 3% collection cost charge, Section 14-17-725

Section 14-1-209 provides guidance when the fine and assessment are paid in installments. The intent of Section 14-1-209(A) is that each installment payment be allocated on a pro rata basis to each applicable fine, assessment, and surcharge. Prior to making these computations, you must determine what assessments and surcharges may apply (conviction surcharge, law enforcement funding fee, DUI assessments, etc.). Once the pro rata amounts have been determined, the prorated fine amount must be divided, with 56% of the amount being retained by the county, and 44% being remitted to the state. The prorated 107.5% assessment amount must be divided, with 64.65 being transmitted to the state, and 35.35 being retained by the county for victims' services. Funds collected as installments should not be held until full payment is received but must be remitted each month to the County Treasurer. To compensate for any slight shift in funds, the division of the final installment payment should be adjusted so that the portion collected as the assessment does not exceed the amount originally imposed.

When an individual pays the fine and/or assessment through installments, Section 14-17-725 provides that the clerk must collect an additional 3% of the installment payment as a collection cost charge. The 3% should be calculated and added to the original fine amount and then prorated and allocated as discussed above. The collection cost is transmitted to the County Treasurer for deposit to the county general fund. An example of the installment payment process may be viewed in "[Attachment A](#)."

The docket sheets may be used to transmit the funds described above to the County Treasurer but the cases transferred from general sessions court should be recorded on docket sheets reserved for those cases only and clearly marked as such so that the County Treasurer can make the correct distribution to the State Treasurer. The South Carolina Revenue Report generated From the South Carolina Judicial Department's Case Management System, may also be used to transmit these funds to the County Treasurer.

C. Magistrates' civil fees and costs

1. Schedules provided in Sections 8-21-1010 and 8-21-1060

The schedules of civil fees and costs which are to be collected by magistrates and deposited in the general fund of the county, as set forth above in V.A.5., are found in

Sections 8-21-1020 and 8-21-1060 of the Code. These statutes also specify fees for proceedings on a coroner's inquest, for summoning a coroner's jury and witnesses, and mileage for serving criminal process. The fee for filing a civil action in magistrates court by summons and complaint is \$55, which includes \$5 plus mileage for service by the magistrate's constable. Section 22-3-340 requires additional assessments to magistrates filing fees, which would increase the fee for a summons and complaint to \$80.00. See explanation of Section 22-3-340 below.

Section 22-3-340 requires that a \$25 assessment be imposed on all summons and complaints and interpleader actions filed in magistrate court, and a \$10 assessment be imposed on all other civil filings in magistrate court, except restraining orders, which require no additional fee. The \$25 and \$10 assessment is in addition to the fees for civil filings required by Sections 8-21-1010 and 8-21-1060 discussed above. The \$25 assessment applies only to summons and complaints, and the \$10 assessment applies to ejectments, summary ejectments, claim and deliveries, and public sales. Again, no filing fee, nor additional assessment, applies to the filing of a petition for a restraining order.

The \$25 and \$10 assessment must be separated from the original filing fee amount, separately identified on your transmittal sheet, and forwarded to your County Treasurer, who shall forward these funds to the State Treasurer for proper distribution. As discussed above, the original filing fee should be forwarded to your County Treasurer in placed in the county general fund. All fees and costs collected by magistrates in civil cases must be turned over to the County Treasurer on the same time schedule as is required for criminal collections. A statement of civil revenues must also be submitted on a monthly basis to the county auditor. See "[Attachment K](#)" for a schedule of civil fees to be collected in magistrate court.

2. Exception, Section 8-21-1020

Although it is not absolutely clear due to a misreference in Section 8-21-1020, it is the general practice that any person may be relieved from payment of magistrates court costs provided by Section 8-21-1010 and 8-21-1060, including costs of constables, upon a finding of indigency by the magistrate.

3. Exception, Section 20-4-4(f)

Section 20-4-40(f) prohibits charging a filing fee for the filing of an order of protection from domestic abuse.

4. Exception, Section 16-3-1750(D)

Section 16-3-1750(D) prohibits charging a filing fee for filing a complaint and motion for a restraining order against harassment or stalking. A magistrate must assess

a filing fee against the nonprevailing party in an action for a restraining order against harassment or stalking. Failure to pay may be enforced by contempt.

5. Exception, Section 27-37-155(B)(5)

Section 27-37-155(B)(5) provides for a magistrate to collect a 3% collection fee on rent paid into court when a tenant raises defenses or counterclaims in a commercial eviction. The statute provides that on payments made through the court, the collecting court may retain the 3% to defray the costs of collection.

6. Other miscellaneous fee

Fee for issuing warrant for ejection of trespasser, see Section 15-67-630

II. Municipal Courts

A. General Rule for Distribution of Revenue

1. Municipal Judges' criminal fines, penalties, or forfeitures, Section 14-25-85

Generally, the revenue generated from criminal fines, penalties, and forfeitures in municipal court is retained by the municipality. However, you may encounter fourteen exceptions to this rule. These exceptions, which are discussed below, are DUI and DUAC, Section 56-5-2930(F) and 56-5-2933(F); DUS, Section 56-1-460; bond estreatments, Section 17-15-260(C); insurance fraud, Section 38-55-560; shellfish violations, Section 44-1-152; game or fish law violations, Sections 50-9-*10, 50-5-25, 50-21-160 and 50-23-220; axle weight gross weight violations, Section 56-5-4160; carriers of household goods and hazardous waste for disposal, Section 58-23-590(E); tattooing regulation violations, Section 44-34-100(G); seatbelt, parking violations, Section 56-5-6240; littering, Section 16-11-700; Conditional Discharge Fee, Section 44-53-450(C); cases transferred from general sessions court, Section 22-3-545; and cases disposed of on behalf of the Aeronautics Commission, Section 55-1-7.

Every criminal fine and penalty collected by the municipal court is to be forthwith turned over by the municipal court clerk to the Municipal Treasurer for which such court is held. It is recommended that copies of the docket be transmitted with the monies to facilitate accounting of deposits with the treasurer.

2. Magistrates serving as Municipal Judges, Sections 14-25-25 and 22-1-70; Exception

A county magistrate may also serve as a municipal judge pursuant to a contract between the county and the city and an order of authorization executed by the Chief Justice. When a magistrate so presides over a municipal court, the fines and penalties imposed and collected shall be turned over to the City Treasurer rather than being remitted to the County Treasurer as normally required by Section 22-1-90.

An exception is provided by Section 22-1-70 in that when, by law any person is entitled, as an informer, to any portion of such fine or penalty, such portion shall immediately be paid over to the informer. In such event, the magistrate should execute an order requiring this payment and immediately turn over the informer's portion to the City Treasurer with a copy of the order for disbursement by the treasurer. This procedure will ensure a proper audit trail.

3. Assessment, Section 14-1-208

Section 14-1-208 for the fiscal year 2016 - 2017 requires any person who is convicted of, pleading guilty or nolo contendere to, or forfeiting bond for an offense tried in municipal court to pay an assessment in an amount equal to 107.5% of the fine actually imposed. If a portion of the fine is suspended, the assessment is calculated on the amount of the fine that is not suspended. This assessment also applies to municipal ordinances. **The assessment cannot be waived, reduced, or suspended.** The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510, and 56-5-2530, or another State law or municipal ordinance restricting parking in a prohibited zone or in a parking place clearly designated for handicapped persons.

The amount collected as assessments must be forwarded each month to the Municipal Treasurer, who shall retain 11.16% of the revenue generated by the assessment for the municipality and transmit the remaining 88.84% by the fifteenth of each month to the State Treasurer on forms and in a manner prescribed by him.

The 11.16% retained by the municipality must be used exclusively for providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. Any funds retained by the Municipal Treasurer which are not used for victim services at the end of the fiscal year must be carried forward to the next year and used exclusively for services for victims of crimes. All unused funds must be separately identified in the municipality's adopted budget as funds unused and carried forward from previous years.

To ensure that fines and assessments imposed pursuant to this section and section 14-1-209(C) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed by each municipality pursuant to

Section 5-7-240 must include a review of the accounting controls over the collection, reporting and distribution of fines and assessments from the point of collection to the point of distribution and a supplementary schedule indicating all fines and assessments collected by the clerk of the municipal court, the amount of fines and assessments retained by the City Treasurer, and the amount fines and assessments remitted to the State Treasurer, and the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward. Within thirty days of the issuance of the audited financial statement, the municipality must submit a copy to the State Treasurer, and a statement of the actual cost associated with the preparation of supplementary schedule required in this subsection, 14-1-208(E). Upon submission to the State Treasurer, the city may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the supplementary schedule, not to exceed \$1,000 each year.

The clerk of court and Municipal Treasurer shall keep records of fines and assessments required to be reviewed under this section in the format determined by the city council. See "[Attachment L](#)" for possible expenditures of victims' funds as recommended by the State Office of Victim's Assistance.

4. Surcharge on all convictions, Section 14-1-211

In addition to all other assessments and surcharges, a twenty-five dollar surcharge is imposed on all convictions obtained in municipal court, including municipal ordinances. The surcharge must not be imposed on convictions for misdemeanor traffic offenses. However, the surcharge applies to all violations of Section 56-5-2930, driving under the influence of liquor, drugs, or like substances, and Section 56-5-2933, DUAC. **No portion of the surcharge may be waived, reduced, or suspended.** The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510, and 56-5-2530, or another State law or municipal ordinance restricting parking in a prohibited zone or in a parking place clearly designated for handicapped persons.

Any funds retained by the Municipal Treasurer pursuant to this Section must be deposited into a separate account for the exclusive use for all activities related to victims services. For the purpose of funds allocation and expenditure, these funds are a part of the general funds of the municipality. These funds must be appropriated for the exclusive purpose of providing victim as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds may be used for, but are not limited to, salaries, equipment that includes computer equipment and Internet access, or other expenditures necessary for providing services to crime victims. All unused funds must be carried forward from year to year and used exclusively for victim services. All unused funds must be separately identified in the county's adopted budget as funds unused and carried forward from previous years.

The surcharge revenue retained by the city must be reported to the State Treasurer monthly in a form and manner required by that office. To insure that surcharges imposed pursuant to Section 14-1-211(A) are properly collected and remitted to the City Treasurer, the annual independent external audit required to be performed by each city pursuant to Section 5-7-240 must include a review of the accounting controls over the collection, reporting and distribution of surcharges from the point of collection to the point of distribution and a supplementary schedule detailing the amount of surcharges collected at the court level, the amount retained by the City Treasurer, the amount of funds allocated to victim services by fund source, how those funds were expended, and any carry forward balances. See "[Attachment L](#)" for possible expenditures of victims' funds as recommended by the State Office of Victim's Assistance.

5. Surcharge on all convictions, Law Enforcement Funding, Section 14-1-212

In addition to all other assessments and surcharges, a twenty-five dollar surcharge is levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in municipal court for misdemeanor traffic offenses or non-traffic (criminal) convictions, including municipal ordinances. **No portion of the surcharge may be waived, reduced, or suspended.** The surcharge does not apply to state or local laws regulating parking. Therefore, the \$25.00 surcharge should not be added to fines resulting from a conviction of any parking regulations.

The revenue collected from the surcharge must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your Municipal Treasurer and then forwarded to the State Treasurer.

Section 14-1-212 (C) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations at a local jurisdiction is required to participate in and cooperate fully with the examination.

6. Surcharge on convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC), Section 14-1-211(A)(2)

Section 14-1-211(A)(2) requires that a one hundred dollar surcharge be imposed on all convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUAC). **No portion of the surcharge may be waived, reduced, or suspended.** These funds should be clearly designated when transmitted to your City Treasurer and then forwarded to the State Treasurer. The State Treasurer shall put these funds in a separate account to be used for spinal cord research at MUSC.

All one-time operating and administrative costs for county and municipal government related to computer upgrades or programming related to these surcharges shall be deducted from the revenue collected pursuant to (A)(2) before remission to the State Treasurer.

7. DUI assessment, Section 56-5-2995(A)

In addition to the assessments and surcharges discussed in II.A.3., II.A.4., II.A.5. and II.A.6. above, a twelve dollar assessment must be imposed for all convictions of Section 56-5-2930, DUI, and Section 56-5-2933, DUAC, obtained in municipal court. These funds should be clearly designated and transferred to your City Treasurer for remittance to the State Treasurer for disbursement pursuant to Section 14-1-201.

8. Drug Court Surcharge, Section 14-1-213

In addition to all other assessments and surcharges required to be imposed by law, during fiscal year 2016 - 2017, a one hundred fifty dollar surcharge is imposed on all misdemeanor drug offense convictions in the municipal court. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected pursuant to this Section must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your Municipal Treasurer and then forwarded to the State Treasurer.

Section 14-1-213 (D) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations at a local jurisdiction is required to participate in and cooperate fully with the examination.

9. Boating Under the Influence Breath Test Fee, Section 50-21-114

Pursuant to Section 50-21-114, any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 50-21-112 (BUI) or 50-21-113 (BUI Per Se), and who was administered a breathalyzer examination at the time of arrest, must be assessed an additional fee of \$50.00 at the time of sentencing. This fee must be forwarded by the County Treasurer to the State Treasurer and credited to the General Fund of the State to defray any costs incurred by SLED and individuals and institutions attaining the samples forwarded to SLED.

10. DUI, DUAC Breath Test Fee, Section 56-5-2950(E)

Section 56-5-2950(E) requires that any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 56-5-2930 (DUI) or 56-5-2933 (DUAC), and who was administered a breathalyzer examination at the time of arrest, must

be assessed an additional fee of \$25.00 at the time of sentencing. This fee must be forwarded to the Municipal Treasurer and to the State Treasurer, and placed by the Comptroller General into a special account to be used by SLED to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

11. Administrative court costs in fraudulent check cases, Sections 34-11- 70(b) and (c), and 34-11-90(c) and (d)

In most fraudulent check cases, the court is entitled to collect reasonable administrative court costs not to exceed forty-one dollars. This amount is collected from the prosecuting witness if the court dismisses the case for want of prosecution, Section 34-11-70(b), or from the defendant if the court dismisses the case upon satisfactory proof of restitution, Section 34-11-70(c). If the case goes to trial and the defendant is convicted, the cost shall be collected, Section 34-11-90(d), even if the sentence is required to be suspended as provided in Section 34-11-90(c).

Whenever there is a conviction, the assessment discussed in II.A.3., II.A.4. and II.A.5. above must be collected along with the fine and administrative court cost. If the fine was ultimately suspended, the assessment is computed and collected based on the amount of the fine that is not suspended.

12. Conditional Discharge fee, Section 44-53-450(C)

Before a person may be discharged and proceedings dismissed in a Municipal court as a result of the successful completion of a conditional discharge as defined in 44-53-450, the person must pay a fee of one hundred fifty dollars. No portion of the fee may be waived, reduced, or suspended, except in the case of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee.

The revenue collected pursuant to this subsection must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt, who shall forward the funds to the Prosecution Coordination Commission. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

13. Payment of the fine and assessment by installments, Section 14-1-209(c) and 3% collection cost charge, Section 14-17-725

Section 14-1-209 provides guidance when the fine and assessment are paid in installments. The intent of Section 14-1-209(C) is that each installment payment be

allocated on a pro rata basis to each applicable fine, assessment, and surcharge. Prior to making these computations, you must determine what assessments and surcharges may apply (conviction surcharge, law enforcement funding fee, DUI assessments, etc.). The prorated 107.5% assessment amount must be divided, with 88.84 being transmitted to the state, and 11.16 being retained by the municipality for victims' services. Funds collected as installments should not be held until full payment is received but must be remitted each month to the Municipal Treasurer. To compensate for any slight shift in funds, the division of the final installment payment should be adjusted so that the portion collected as the assessment does not exceed the amount originally imposed.

When an individual pays the fine and/or assessment through installments, Section 14-17-725 provides that the municipal court must collect an additional 3% of the installment payment as a collection cost charge. The 3% should be calculated and added to the original fine amount and then prorated and allocated as discussed above. The collection cost is transmitted to the Municipal Treasurer for deposit to the county general fund. An example of the installment payment process may be viewed in "[Attachment C](#)."

B. Exceptions to the general rule

We have identified thirteen exceptions, that may be encountered, to the general rule that the municipality receives all of the revenue from criminal fines, penalties, and forfeitures in municipal court, or the general rule that assessments and surcharges be added to all of criminal fines.

1. DUI and DUAC, \$100.00 Pull-Out, Sections 56-5-2930(F) and 56-5-2933(F)

Sections 56-5-2930(F) and 56-5-2933(F) require that \$100.00 of each fine imposed pursuant to Sections 56-5-2930 (DUI) and 56-5-2933 (DUAC) must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. This applies to first and subsequent offenses of those statutes. The remainder of the fine, absent the assessments and surcharges discussed above, shall be retained by the municipality. These funds should be clearly designated in your monthly report to the Municipal Treasurer and State Treasurer.

2. DUS, \$100.00 Pull-Out, Section 56-1-460 (C)

Section 56-1-460(C) as it relates to Driving under Suspension requires that \$100.00 of each fine imposed pursuant to that section must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. The remainder of the fine shall be forwarded to the Municipal Treasurer and placed in the Municipal General Fund. This

applies to first and subsequent offenses of those statutes. These funds should be clearly designated in your monthly report to the Municipal Treasurer and State Treasurer.

a. Exception, Section 12-37-2740, DUS for Failure to Pay Property Tax

An exception to the rule requiring \$100 of each Driving Under Suspension fine be "pulled out" for the benefit of the Department of Public Safety is found at Section 12-37-2740, Driving Under Suspension For Failure to Pay Property Taxes. That section contains specific penalty provisions for such a violation which are separate and distinct from the penalties provided in Section 56-1-460. When handling those cases, reference should be made to that statute for the penalty requirements, and the \$100 "pull out" does not apply.

3. Bond estreatments, Section 17-15-260

If a case was originated by a municipality and the bond is estreated, Section 17-15-260 provides that the funds are divided as follows: 25% to the state general fund, 25% to the solicitor's office, 25% to the county general fund, and 25% to the municipality. The funds should be turned over to the Municipal Treasurer on a monthly basis and the state and county's share should be transmitted to the State Treasurer and County Treasurer.

a. Payment of estreatment in installments, Section 38-53-70

Section 38-53-70 provides that the court may allow the surety to pay an estreatment in installments for a period of up to six months. However, the surety must pay a handling fee to the court in an amount equal to 4% of the value of the bond. Per Order of the Chief Justice dated November 14, 2002, the 4% handling fee should be dispersed with the other monies estreated pursuant to II.B.2. above.

4. Insurance fraud, Section 38-55-560

Section 38-55-560 requires that 100% of all criminal fines generated from violations of Section 38-55-170 or 540 must be transmitted to the Insurance Fraud Division of the Office of the Attorney General. The statute provides that SLED and the Attorney General divide these funds equally, and those two agencies have entered into a written whereby the Attorney General receives the funds and then makes the proper distribution to SLED. These funds should be clearly noted on your report to the Municipal Treasurer so that the proper amount of funds can be transmitted to Insurance Fraud Division, Office of the Attorney General, P. O. Box 11549, Columbia, South Carolina 29211. The assessment discussed above in II.A.3., II.A.4. and II.A.5. above should be collected on criminal insurance fraud violations. See "[Attachment I](#)" for use in transmitting these funds to the Municipal Treasurer.

5. Shellfish Law Violations, Section 44-1-152

Section 44-1-152 requires that criminal fines generated from violations of State shellfish laws found in Title 44, or regulations promulgated by DHEC, must be transmitted to the City Treasurer monthly. One-third of the fine must be placed in the City General Fund. The remaining two-thirds is split, with one-half remitted to the State to be deposited in the general fund, and one-half to be remitted to DHEC to be used in enforcing shellfish laws and regulations. These funds should be clearly noted on your report to the county so that the proper amount of funds can be transmitted to Shellfish Enforcement--J0403S976000, SCDHEC Bureau of Finance, Accounts Receivable Division, 2600 Bull Street, Columbia, South Carolina 29201. See "[Attachment J](#)" for use in transmitting these funds to the City Treasurer. The assessments discussed in II.A.2., II.A.3. and II.A.4 above should also be collected on these violations.

6. Game or fish law violations, Sections 50-9-910, 50-5-25, 50-21-160, and 50-23-220

Typically, game or fish law violations are disposed of in county courts. However, should you encounter such an offense, please follow these instructions. Section 50-9-910(A) requires that 100% of all revenues from fines and forfeitures from violations of Chapters 1 through 16 of Title 50 (Fish, Game, and Wildlife), except for violations of marine resources laws, shall be transmitted to the Municipal Treasurer monthly. The treasurer then transmits the funds to the Department of Natural Resources, Accounting Department by the 15th of each month, to be credited to the County Game and Fish Fund. The remittances shall be accompanied by a statement showing the name of all persons fined, the amount of each fine, the summons number and the court in which each fine was collected.

Section 50-5-25 provides for the distribution of 100% of all revenues from fines and forfeitures for violations of marine resource laws. Similar to the distribution discussed in the paragraph immediately above, that section provides that one hundred percent of these fines shall be transmitted to the Municipal Treasurer monthly, and then forwarded to the Department of Natural Resources by the 15th of each month, to be deposited in the County Game and Fish Fund for the county in which the offense occurred.

Section 50-21-160 provides that 75% of all fine revenues generated pursuant to offenses contained within Chapter 21 of Title 50 shall be forwarded to the Municipal Treasurer monthly, and then forwarded to the Wildlife Department, Natural Resource Enforcement Division by the 15th of each month. 25% of those fines must be forwarded to the County Treasurer in which the fine is levied, and placed in the County General Fund.

Section 50-23-220 requires that 100% of all revenues received and collected pursuant to Chapter 23 of Title 50 (Titling of Watercraft and Outboard Motors) shall be forwarded to the Municipal Treasurer on a monthly basis, who shall forward these funds to the State Treasurer to be placed in a special fund for the Wildlife Department to be

used for expenses in administering the provisions of Chapter 23, or for any purpose related to the mission of the Department.

Section 50-9-910(C) requires that 100% of revenue from fines and forfeitures for violations of “other sections” of this Title and for “all other offenses investigated or prosecuted by the Department” must be forwarded to the County Treasurer monthly, who shall then forward them to the Department to be used exclusively for law enforcement operations. The phrase “other sections” has been interpreted to include violations of Chapters 18, 19, 25, and 26 of Title 50, since none of the Sections described above affect these Chapters. The phrase “all other offenses investigated or prosecuted by the Department” has been interpreted to include the offenses referenced in Section 50-3-410, as well as any other non-Title 50 offenses investigated or prosecuted by the Department.

All game or fish law violations are subject to the assessments set forth in II.A.3., II.A.4. and II.A.5. above. The Department of Natural Resources monitors the disposition of all wildlife cases. Should a game or fish law violation be disposed of in your court, you may expect to receive an invoice similar to the one marked "[Attachment G](#)".

- a. Exception: Criminally Negligent Use of Firearms/Archery Tackle, Section 50-1-85

An exception to the general distribution of Title 50 offenses is found in Section 50-1-85, regarding Criminally Negligent Use of Firearms/Archery Tackle. That statute requires that 100% of all fines collected from a violation of the statute must be remitted to the State Treasurer to be deposited into the South Carolina Victim's Compensation Fund. These funds should be clearly noted on your report to the Municipal Treasurer so that the proper amount of fines can be transmitted to the State Treasurer for disbursement into the Victim's Compensation Fund. The assessments discussed in II.A.2., II.A.3. and II.A.4. above should be collected on violations of Section 50-1-85 violations, and forwarded through your Municipal Treasurer to the State Treasurer for distribution to the normal recipients.

7. Axle weight and gross weight violations, Section 56-5-4160

Section 56-5-4160 provides that all fines collected for violating the weight limits set by Section 56-5-4130 or Section 56-5-4140 must be deposited within 45 days in the account designated the "Size and Weight Revitalization Program Fund for Permanent Improvements". These funds should be clearly noted on your report to the Municipal Treasurer so that the proper amount of fines can be transmitted to the State Transport Police at 10311 Wilson Boulevard, P.O. Box 1993, Blythewood, SC 29016. The assessment discussed in II.A.3. and II.A.5., but not II.A.4., above should be collected on weight violations.

8. Carriers of household goods and hazardous waste for disposal, Section 58-23-590(E)

Section 58-23-590(E) requires that 75% of each fine generated from a violation of Section 58-23-40 be deposited with the Office of Regulatory Staff. The county retains the remaining 25% of the fine. These funds should be clearly noted on your report to the Municipal Treasurer so that the proper amount of fines can be transmitted to the Office of Regulatory Staff, 1401 Main Street, Suite 900, Columbia, South Carolina 29201. The assessment discussed in V.A.2., V.A.3. and V.A.4. above should be collected on these violations.

9. Tattooing Regulation Violation, Section 44-34-100(G)

Chapter 34 of Title 44 of the Code legalizes and regulates tattooing in this State. Section 44-34-100(G) provides that all criminal fines generated from a violation of that Chapter, or from Section 16-17-700, be remitted to the Department of Health and Environmental Control. These revenues should be forwarded to your County Treasurer monthly, along with a list of the disposed cases, who shall remit them to the following address: DHEC, Bureau of Health Licensing, Attention: Dennis Gibbs, 2600 Bull Street, Columbia, SC, 29201. The assessment discussed in II.A.3., II.A.4. and II.A.5. above should be collected on these violations.

10. Seatbelt, Municipal Ordinance Parking Violations, Section 56-5-6520

Pursuant to Section 56-5-6540, no assessments or surcharges shall be added to mandatory seatbelt law violations. Therefore, the assessments discussed in II.A.3., II.A.4. and II.A.5. above should not be collected on seatbelt violations. The offense requires a \$25 fine for each violation, which should be forwarded to your municipal treasurer. Also, no assessments or surcharges should be added to the municipal ordinances relating to timed or chalked parking violations.

11. Littering, Section 16-11-700

Pursuant to 16-11-700, individuals convicted of littering must be sentenced to a specified number of hours of litter gathering labor as a part of the sentence, which may not be suspended. The statute provides that the defendant may elect to pay an additional monetary penalty of five dollars per hour instead of the required litter gathering. That amount must be added to the original fine imposed prior to adding the assessments and surcharges discussed in II.A.3., II.A.4. and II.A.5. above. Moneys collected in lieu of litter gathering must be remitted to the municipality of conviction and may be used for litter gathering supervision.

12. Fees and Fines assessed by the Aeronautics Commission, Section 55-1-7

Section 55-1-7 requires that 100% of all fees and fines collected from a violation contained in any Chapter of Title 55 of the South Carolina Code of Laws, relating to the criminal and civil enforcement provisions of the Aeronautics Commission, must be remitted to the State Treasurer to be deposited into the State Aviation Fund. These funds should be clearly noted on your report to the City Treasurer so that the proper amount of fines can be transmitted to the State Treasurer for disbursement into the State Aviation Fund. The assessments discussed in II.A.2., II.A.3. and II.A.4. above should be collected on criminal violations of Title 55, but not civil violations.

See "[Attachment C](#)" for examples of the above mentioned collections and disbursements. A transmittal form which may be used to remit the state's portion of the funds described above to the Municipal Treasurer can be found at "[Attachment F](#)", or in those municipalities who participate in the Judicial Department's Case Management System, the Municipal Revenue Report.

13. Cases transferred from the general sessions court, Section 22-3-545
 - a. General Rule

Section 22-3-545 establishes a procedure for transferring certain cases from the general sessions court to the municipal court for disposition and provides that the revenue generated by these cases shall be distributed as if the fines had been imposed in the circuit court. Likewise, the assessments and surcharges required in circuit court would be applied in cases transferred pursuant to Section 22-3-545. When handling these cases, please refer to I.B.9. in the magistrate section of this memorandum regarding distribution of revenues in the court of general sessions and the applicable surcharges and assessments.

The procedure for transferring cases pursuant to Section 22-3-545 does not affect the cases that are remanded to the municipal court for disposition on a lesser included offense within the court's jurisdiction.

See "[Attachment A](#)" for examples of the above mentioned collections and disbursements when cases are transferred from the general sessions court. A transmittal form which may be used to remit the funds described above to the Municipal Treasurer can be found at "[Attachment F](#)". In those municipalities who participate in the Judicial Department's Case Management System, the Municipal Revenue Report may be used to transmit those funds to the Municipal Treasurer.