Department of Finance and Administration – Policy 11
Recovery of Overpayments and Other Debts Owed by Employees to the State
(Revised June 2008)

Introduction and Background

1. This policy statement 11 has been revised to provide guidance to State agencies and departments for the recovery of (a) wage overpayments to State employees, (b) payroll-related undercollections, and (c) other miscellaneous debts. It is effective upon the implementation of the Edison Project payroll system.

Applicable State Law

2. According to T.C.A. §4-3-1007, the Department of Finance and Administration "shall have power and shall be required: 1) to maintain a system of general accounts embracing all the financial transactions of the state government;...(10) to exercise the rights, powers and duties (except the power to collect taxes), conferred by law upon the comptroller of the treasury...insofar as these provisions relate to financial administration and general accounting control of the state government, involving the keeping of general accounts,...[and] (11) in consultation with the comptroller of the treasury, to establish guidelines for the evaluation by agencies of their systems of internal accounting and administrative control."

   Also T.C.A. §9-4-604, "No person shall draw any money from the public treasury until all debts, dues, and demands owing by such person to the state are first liquidated and paid off. The commissioner of finance and administration shall not issue any warrant upon the treasury in favor of a person in default until all such person's arrearages to the treasury are audited and paid, otherwise than by allowing such defaulter or delinquent credits on the amounts of such person's delinquencies for such sum or sums as may at any time be due and owing to such person from the treasury."

Bankruptcy

3. If a wage overpayment occurs prior to the filing of a bankruptcy and the attempted recovery is made after the filing, the state will need to file a claim with the bankruptcy court and obtain approval before recovery.

   If the employee is currently in bankruptcy and a wage overpayment occurs, the state may recover the overpayment due to timesheet errors (the recording of time worked and leave taken). In other situations the State will need to file a claim with the bankruptcy court and obtain approval before recovery.

Fair Labor Standards Act – Minimum Wage & Overtime Test

4. The Fair Labor Standards Act (FLSA) considers a wage overpayment an advancement of wages. Recovery of wage overpayments may be deducted from an employee's earnings even if such deductions cut into the minimum wage or overtime pay due the employee.

   Debt incurred because of failure to return state funds or property, or the loss of state funds or property should be treated in a different manner than the wage overpayments described above. These debts must meet the following FLSA minimum wage and overtime test: No deduction may be made from an employee's wages that would reduce the employee's earnings below the required minimum wage requirement. The minimum wage test cannot be avoided by paying an employee a regular paycheck, and then requiring repayment by cash or check if the repayment amount reduces the regular paycheck amount below the minimum wage and overtime compensation. Debt can be taken only from regular wages – not from overtime pay.

   The FLSA considers some employees, due to the nature of job responsibilities, exempt from overtime rules. Deductions for debt recovery from an exempt employee's salary may result in a change in the employee's FLSA status for the pay period in which the deduction is made. In order to determine the appropriate course of action to recover the debt, agency counsel, central payroll, and the Department of Human Resources should be consulted before taking these deductions.

General Rule

5. Once an overpayment is discovered, the reason and amount of overpayment should be determined immediately. Employees, active and terminated, who have received or are receiving wage overpayments, whether through administrative error or oversight, are required to refund the amount of overpayment to the State of Tennessee. Payroll deduction is a proper method of recoupment of such overpayment. Full repayment through the normal payroll process is preferred.

   In general, repayments processed by installment require a deduction equaling 10% of total gross wages for the pay period. In accordance with the Official Rule of the Department of Finance and Administration Chapter 0620-1-9 (Policy and Procedures Governing Write-off of Accounts Receivable), any amount under $25.00 should not be recovered. Other than amounts under $25.00 or amounts properly written off pursuant to Departmental policies, agencies may not forgive an employee from compensation overpayments. Agencies and departments of state government with the exception of the University of Tennessee and Board of Regents are required to follow this policy statement.

Recovery of Wage Overpayment from Active Employees – $100.00 or More (Except for Timesheet Errors)

6. Wage overpayment due for reasons other than timesheet errors amounting to one hundred dollars ($100.00) or more will require employee notification prior to a payroll deduction to recoup the monies owed. A copy of this notification should be sent to the Office of the Comptroller of the Treasury (Division of State Audit), the Technical Services Division of the Department of Human Resources, and the Department of Finance & Administration Payroll Section.

   If an employee does not respond by the deadline indicated on the notification letter, the employee has waived the opportunity to respond. Recovery of the overpayment may proceed. If the employee responds to the notification letter but (a) disagrees with the overpayment amount, and/or (b) refuses to sign an authorization for repayment, then before repayment deductions begin, the employee has the right to an immediate pre-decision meeting with a person that has direct access to the agency appointing authority for this purpose. Consult with the agency human resource office director to obtain the name of the agency or facility appointing authority or their representative.

   The Department of Human Resources will then approve each repayment before payroll processes the deduction.

Recovery of Wage Overpayments from Active Employees – Timesheet Errors and Amounts Less Than $100.00

7. The following procedures apply for wage overpayments for active employees when the overpayment is due to errors related to the recording of time worked and leave taken (timesheet errors), or for amounts less than $100.00 for any reason. Wage overpayments for any reason that amount to less than one hundred dollars, or an overpayment due to timesheet error will be automatically deducted from the employee's future payroll until paid in full. The paying State agency or department should process a retroactive transaction for the amount of the overpayment. Prior notification is not required when an employee's pay must be adjusted for errors related to the recording of time worked and leave taken (timesheet errors), or for wage overpayments under $100.00 However, the agency shall notify the employee that the recovery of the overpayment has occurred. The notification should also inform the employee that he or she may request a meeting with an agency official with direct access to the appointing authority to question the reasons for the recovery, and that such a meeting must be requested within three business days of notification. The agency must schedule this meeting within five business days of the request.

Recovery of Payroll-Related Undercollections from Active Employees

8. Payroll-related under collections (typically FICA deductions) follow the applicable rules listed above with the following exceptions.

    a. The Office of the Comptroller does not need to be notified.
    b. The miscellaneous deduction does not need to be approved by the Department of Human Resources. The employing agency approves this deduction.

Recovery of Other Debts from Employees

9. Agencies and departments should make every effort to recover other debts from employees. Employees should be notified in advance, preferably in the orientation process, that receipt of state funds and/or property constitutes an obligation to return the funds and/or property to the State of Tennessee. Upon termination of employment or upon the department's request, the employee should return the funds or the property in good condition. In the event the funds and/or property are not returned promptly upon termination or request, a debt is incurred to the State of Tennessee. The employee should reimburse the State for any amount outstanding.

    Employees should be notified of the expected recovery from losses of state funds and/or property. A copy of this notification should be sent to the Office of the Comptroller of the Treasury (Division of State Audit), the Technical Services Division of the Department of Human Resources, and the Department of Finance and Administration Payroll Section.

    If an employee does not respond by the deadline indicated on the notification letter, the employee has waived the opportunity to respond. Recovery of the debt may proceed. If the employee responds to the notification letter but (a) disagrees with the overpayment amount, and/or (b) refuses to sign an authorization for repayment, then before repayment deductions begin, the employee has the right to an immediate pre-decision meeting with a person that has direct access to the agency appointing authority for this purpose. Consult with the Agency Human Resource Office Director to obtain the name of the agency or facility appointing authority or their representative.

Recovery of Overpayments, Undercollections, or Other Debts from Terminating Employees with One Outstanding Paycheck Available.

10. Wages in excess of the repayment deduction should be paid to the employee timely.

Recovery of Overpayments, Undercollections, or Other Debts from Inactive Employees

11. If a final paycheck is not available and recovery by deduction is not possible, the Payroll Section will set up this debt as an accounts receivable. The debt is then subject to the provisions of Finance & Administration Policy 23 Accounts Receivable – Recording, Collection and Write-Offs. In accordance with Chapter 0620-1-9 of the Official Rules of the Department of Finace and Administration, "The Director of Payroll, Division of Accounts, Department of Finance and Administration may write off payroll overpayments to employees of twenty-five dollars ($25.00) or less."

Exceptions

12. Exception requests should be addressed to the Director of Payroll, Division of Accounts, Department of Finance & Administration.

Approval of the Commissioner of Finance and Administration

I, M. D. Goetz, hereby approve of this Policy Statement 11 of the Department of Finance and Administration, and authorize actions necessary to implement its requirements.

Signed _____ Date 6/9/08
M.D. Goetz, Commissioner
Department of Finance & Administration

Approval of the Comptroller of the Treasury

I, John G. Morgan, hereby approve of this Policy Statement 11 of the Department of Finance and Administration, and authorize actions necessary to implement its requirements.

Signed _____ Date 7/3/08
John Morgan, Comptroller
Office of the Comptroller of the Treasury