TECHNICAL UPDATE

Recommended Procedures to Account for Forfeited Property

Pursuant to Iowa Administrative Code (IAC) Rule 61-33.7, the Office of Auditor of State, State of Iowa, developed the following recommended procedures to account for forfeited property. A complete copy of IAC 61-33, Forfeited Property, follows the recommended procedures.

CODE OF IOWA SECTION 11.6(8) states: "The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audits and examination matters."

These Accounting Procedures for Forfeited Property are RECOMMENDED by the Iowa State Auditor pursuant to Iowa Administrative Code (IAC) Rule 61—33.7.

Pursuant to IAC Rule 61 – 33.7, an agency which seizes property for forfeiture shall maintain records showing the disposition, including destruction, of forfeited property for a period of three (3) years from the date of forfeiture.

An agency receiving or holding proceeds from the disposition of forfeited property under the authority of Iowa Code Chapter 809A shall account for those funds as set forth below:

1. A forfeiture fund shall be created in the office of the respective county treasurer or city finance officer and activity in the fund shall be included in the county or city annual budget and financial statements. All proceeds from the disposition of forfeited property shall be promptly deposited into the fund. An unencumbered balance in the fund shall not revert to county or city general revenues. The county or city shall be the fiscal authority of the fund, subject to the budgeting procedures below and the restrictions in IAC Rules 61--33.1 through 33.10.

2. All funds must be used, as determined by the agency in consultation, when necessary, with the Office of the Attorney General, to enhance the enforcement of the criminal law and cannot be used to supplant or otherwise replace normally budgeted items of the agency.

3. Disbursements from the fund shall be approved by the county or city governing body, but disbursements cannot be denied except if a disbursement is illegal, exceeds the revenue in the fund, or violates IAC Rule 61—33.6(3). All disbursements shall be charged to the appropriate expenditure account in accordance with the Uniform Chart of Accounts for Iowa County or City Governments.

4. Budget amendments to reflect deposits of proceeds from disposition of forfeited property and expenditures from the fund during the fiscal year shall be approved by the governing body, as needed, except if an expenditure is illegal, exceeds the revenue in the fund, or violates IAC Rule 61—33.6(3).

5. Proper control of funds disbursed for confidential law enforcement investigation purposes shall include the following provisions:

   a. Disbursements for confidential law enforcement investigation purposes shall be by warrant made payable to the agency head, or designee and another responsible individual. These persons shall establish and maintain dual control of said funds which shall be audited annually by the state auditor or other independent auditor.

   b. A confidential file shall be maintained for each investigation which will include all documentation (timesheets, receipts, invoices, etc.) necessary to document the disposition of the funds, including documents signed by the recipient and/or the individual disbursing the funds.

   c. Funds in a dual control account which are not needed for an ongoing investigation shall be promptly deposited to the forfeiture fund.

6. Payments to an informer as an award, fee, or reward for information about criminal activity do not have to be reported to the IRS on a Form 1099 Misc. if the payment is made by a federal, state, or local government agency. For more information, see IRS Regulations section 1.6041-3(1).

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CHAPTER 33
FORFEITED PROPERTY

61—33.1(809A) Scope of rules. These rules apply to property forfeited under the authority of Iowa Code section 809A.25. They do not apply to property seized for forfeiture by the department of natural resources under Iowa Code section 483A.33.

61—33.2(809A) Maintenance and storage of property during pendency of proceedings. The seizing agency that initiates a seizure for forfeiture must arrange for and pay costs associated with the proper care of property seized for forfeiture within the following guidelines:

33.2(1) *Motor vehicles.*

a. Motor vehicles must be stored in a manner which will minimize deterioration due to lack of operation and maintenance.

b. The use of commercial towing and storage facilities is at the expense of the seizing agency. The department will not assume responsibility for such fees, whether before or after forfeiture, unless the department decides to retain ownership of the vehicle for its use instead of transferring title to the seizing agency.

33.2(2) *Cash.* Where possible, a seizing agency should, in cooperation with the prosecuting attorney, secure a court order authorizing cash to be deposited in an interest-bearing account. The department will not claim any interest in income derived from such account, but the interest must be accounted for as provided by these rules.

33.2(3) *Real property.*

a. Unoccupied structures of value must be equipped with alarm systems or otherwise safeguarded to protect them from unlawful entry and damage by fire. The seizing agency should consider the value of the property, the condition of existing gates and locks, and the potential threat to public safety when determining whether alarm systems or other safeguards are appropriate.

b. Real property that complies with local and state building and housing code standards at the time of seizure must be maintained to local and state building and housing code standards as well as to the standard of neighboring properties, including mowing and removal of snow as necessary. Seized property that does not comply with code standards at the time of seizure must not be allowed to degrade and should be maintained in a condition that does not present a threat to public safety.

33.2(4) *Other property.* Property other than listed above shall be cared for as appropriate, giving due consideration to the nature of the property.

61—33.3(809A) Notice to department.

33.3(1) An agency which seizes property for forfeiture must notify the department within ten days of the seizure. Notice shall include the identity of the party from whom the property was seized, the date and county of seizure, and an inventory of the property seized for forfeiture.

33.3(2) A prosecuting attorney who obtains a declaration of forfeiture or an order forfeiting property must provide the department with a copy of the declaration or the order forfeiting the property within ten working days of receiving the order.

[ARC 8476B, IAB 1/13/10, effective 2/17/10]

61—33.4(809A) Disposition of forfeited property.

33.4(1) *Controlled substances.* An agency in possession of a controlled substance which has been forfeited shall dispose of it as required by Iowa Code section 124.506.

33.4(2) *Obscene materials.* Materials which violate the provisions of Iowa Code chapter 728 shall be destroyed. An inventory and a record of the destruction of obscene materials shall be maintained by the agency.

33.4(3) *Firearms and ammunition.* Forfeited firearms and ammunition must be disposed of pursuant to the rules of the department of public safety.

33.4(4) *Real property.* An agency seizing real property for forfeiture must do the following:

a. Accept transfer of title from the department.

b. Pay all costs associated with transfer of title, including abstracting costs, property taxes and assessments.

c. Indemnify the state for any expenses it might become liable for by being the owner of the property during the forfeiture and transfer process, including but not limited to environmental cleanup costs, abstracting costs, and any expenses the department incurs to comply with reasonable community standards of maintenance.

d. Indemnify the state for any expenditures incurred as a result of liability to a third party for any injury associated with the property which occurs during the period from seizure through transfer of ownership to the agency.

e. The department will retain 20 percent of the gross sale price of the real property. The balance of the proceeds, 80 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

33.4(5) *Alcoholic beverages and beer.* Alcoholic beverages and beer shall be destroyed. An inventory and a record of the destruction of forfeited alcoholic beverages and beer shall be maintained by the agency.

33.4(6) *Motor vehicles.*

a. Orders forfeiting motor vehicles must include a physical description of the vehicle, as well as the vehicle identification number.

b. Motor vehicles must be titled to the department prior to being transferred to the seizing agency or its designee.

c. The department requires payment of a fee of $200 for processing the transfer of title to a vehicle.

33.4(7) *Cash.*

a. The department will retain 20 percent of forfeited cash. The balance of forfeited cash, 80 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

b. In the event of a cash forfeiture in excess of $400,000, amounts over $400,000 shall be apportioned as follows: 40 percent to the seizing agency or agencies; 40 percent to other law enforcement agencies within the region; and 20 percent to be retained by the department.

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61—33.5(809A) Use by the department. The department will review each item of forfeited property to determine if it is of a nature that would be useful to the department in enforcement of the law. If such a use exists, the department may take possession of the property and retain ownership instead of transferring it to the seizing agency.

[ARC 8476B, IAB 1/13/10, effective 2/17/10]

61—33.6(809A) Gifts to other law enforcement agencies.

33.6(1) If the department determines that it does not have use for an item of forfeited property, the seizing agency must accept ownership of the property and use or dispose of it under these guidelines.

33.6(2) If the department determines that property is available for gift to agencies involved in the investigation or prosecution of a case but is presented with conflicting requests for its gift, the department may refuse to give the property to any of the agencies.

33.6(3) Forfeited property, including cash, must be used to enhance the enforcement of the criminal law and cannot be used to supplant or otherwise replace normally budgeted items. Questions regarding the propriety of the disposition of forfeited assets should be directed to the department.

61—33.7(809A) Record keeping. An agency which seizes property for forfeiture shall maintain records showing the disposition, including destruction, of forfeited property for a period of three years from the date of forfeiture. The records shall comply with any recommendations of the state auditor but must, at a minimum, include the following:

1. The date of forfeiture, a description of the property and the name(s), if available, of the person(s) who owned the property and person(s) in possession of the property at the time of seizure.
2. The manner in which all forfeited property has been used by the agency.

3. The disposition of all forfeited property which has been sold or otherwise disposed of, and of the proceeds derived therefrom.

4. The manner of use of all forfeited funds and proceeds from the sale of forfeited property.

61—33.8(809A) Failure to comply. If the department determines that an agency is not in compliance with these rules, the department may suspend, temporarily or permanently, the agency's privilege of receiving gifts of forfeited property.

61—33.9(809A) Appeal. An agency may appeal a decision to suspend its privilege to receive gifts of forfeited property under rule 61—33.8(809A) or other departmental action upon the basis that it has not been done according to these rules as follows:

33.9(1) *Appeal to deputy attorney general for criminal justice.* An applicant may file a notice of appeal to the deputy attorney general within 30 days of the departmental action that forms the basis of appeal. The deputy attorney general shall review the matter, taking testimony if necessary, and issue a written decision.

33.9(2) *Appeal to attorney general.* An agency may further appeal from a denial of appeal by the supervising deputy to the attorney general within 30 days of the date the supervising deputy's written decision was mailed.

33.9(3) *Appeal to district court.* An agency which disagrees with the decision of the attorney general has the right to appeal to the district court within 30 days of receipt of the attorney general's final decision.

61—33.10(809A) Interest holders.

33.10(1) The term "interest holder" shall include an entity which owns or holds a properly perfected mortgage, security interest, or other interest in real or personal property.

33.10(2) An interest holder with an exempt interest in forfeited property may be appointed as an agent to act in disposing of forfeited property. An interest holder acting as an agent in disposing of forfeited property shall be relieved of any and all duties that would be imposed on the lienholder if it were acting in its capacity as a lienholder.

These rules are intended to implement Iowa Code chapter 809A.

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