



Auditor of Public Accounts
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Harmon Releases Audit of Magoffin County Sheriff's Tax Settlement

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the sheriff's settlement – 2014 taxes for Magoffin County Sheriff Carson Montgomery. State law requires the auditor to annually audit the accounts of each county sheriff. In compliance with this law, the auditor issues two sheriff's reports each year: one reporting on the audit of the sheriff's tax account, and the other reporting on the audit of the fee account used to operate the office.

Auditing standards require the auditor's letter to communicate whether the sheriff's settlement presents fairly the taxes charged, credited and paid in accordance with accounting principles generally accepted in the United States of America. The sheriff's settlement is prepared on the regulatory basis, which is described in the auditor's opinion letter. Regulatory basis reporting for the sheriff's settlement is an acceptable reporting methodology, and this reporting methodology is followed for all 120 sheriff settlements in Kentucky.

The sheriff's financial statement fairly presents the taxes charged, credited and paid for the period April 16, 2014 through May 16, 2015 in conformity with the regulatory basis of accounting.

As part of the audit process, the auditor must comment on noncompliance with laws, regulations, contracts, and grants. The auditor must also comment on material weaknesses involving the internal control over financial operations and reporting.

The audit contains the following comments:

The sheriff's office lacks adequate segregation of duties over receipts and disbursements: The sheriff's office lacks adequate segregation of duties and internal controls over tax receipts and disbursements. The bookkeeper and deputy clerks collect tax receipts. The bookkeeper or a deputy clerk prepares a daily bank deposit and reconciles the daily receipts to the daily collection report and posts items to the receipts ledger. The bookkeeper prepares the month-end tax reports, prepares checks for tax distribution based on the month-end tax reports, and posts checks to the

disbursements ledger. The bookkeeper and the sheriff sign tax distribution checks. The county treasurer prepares the monthly bank reconciliation, although there is nothing documented to determine who prepared the reconciliation or that it was reviewed by the sheriff.

The sheriff failed to implement proper internal control procedures. By not segregating these duties, there is an increased risk of misappropriation of assets either by undetected error or fraud. Internal controls and proper segregation of duties protect employees and the sheriff in the normal course of performing their daily responsibilities. Good internal controls dictate the same employee should not receive payments, prepare deposits, and post to the receipts ledger. The same employee should not prepare monthly reports, sign checks, and post to the disbursements ledger, and the same employee should not deposit funds, sign checks, post to ledgers, and prepare bank reconciliations and monthly reports.

We recommend the sheriff's office implement internal controls and segregate duties as much as possible. Employees receiving payments and preparing deposits should not be posting to the receipts ledger and preparing bank reconciliations. Employees preparing and signing checks should not be posting to the disbursements ledger and preparing bank reconciliations. A proper segregation of duties may not be possible with a limited number of employees, and in that case, the sheriff could take on the responsibility of preparing or reviewing the daily deposits, receipts and disbursements ledgers, monthly reports, and bank reconciliations. These reviews must be documented in a way that indicates what was reviewed, by whom, and when, because signing off on inaccurate information does not provide internal control.

Sheriff's Response: Due to the size of our budget and the limited number of staff, we cannot be expected to segregate duties at the level expected.

Auditor's Reply: As noted in the comment, when staffing limitations prevent adequate segregation of duties, compensating controls and strong management oversight should be put into place to mitigate the risks.

The sheriff has unpaid liabilities of \$18,808 and a deficit in his 2014 tax account: The sheriff has a deficit of \$622 in his 2014 tax account. Deficits are primarily due to undeposited receipts. The 2014 tax account cannot be closed until all receivables and liabilities are resolved. In order to settle the account, the sheriff should collect and pay the following:

Assets

Cash in Bank	\$	15,330
Due From School District		2,832
Due From Soil District		<u>24</u>
Total Assets		18,186
Unpaid Obligations-		
Other Taxing Districts-		
County	\$	13,550
Library		407
Health		149
Extension		316
Add on fees due 2015 Fee Account-Property		3,840
Add on fees due 2015 Fee Account-Gas & Oil		42
Interest Due Sheriff's Fee Account		88
Interest Due School		47
Deposit Errors Due 2015 Fee Account		<u>369</u>
Total Unpaid Obligations		<u>18,808</u>
Total Fund Deficit as of Exit Conference Date	\$	<u>(622)</u>

Failure to pay liabilities timely causes taxing districts and other governmental agencies to be deprived of funds for significant time periods. After all receivables are collected and all liabilities are paid, the sheriff will be able to close his 2014 tax account. KRS 134.192 states, "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year." Furthermore, KRS 64.820 states:

(1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.

(2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

In order to pay the liabilities due the districts and the other accounts noted above, \$622 should be collected from the sheriff personally and deposited into the 2014 tax account. We recommend the sheriff collect all receivables and pay all the liabilities to close this account.

Sheriff's Response: This matter has been addressed in a previous response. This is a matter regarding payroll for December being paid in January.

Auditor's Reply: The sheriff's 2014 tax account did not and should not pay payroll. As previously stated, tax account deficits are primarily due to undeposited receipts.

The sheriff's office did not properly account for franchise tax bills: Franchise bills are generated in the county clerk's office and given to the sheriff's office for collection. The sheriff also collects bank franchise bills. During the 2014 tax collection period, the sheriff collected \$660,218 in franchise taxes. The sheriff did not maintain copies of original franchise bills from the county clerk's office and did not maintain a listing of all franchise bills paid and unpaid. Although the bookkeeper marked some franchise bills paid in the computer system, there was no internal control system in place to track all franchise tax bills mailed, paid, and distributed to the taxing districts. As a result, the sheriff failed to pay \$17,747 to the taxing districts for 2014 franchise tax collections. The sheriff also did not collect \$40,723 in bank franchises and did not turn over unpaid bank franchises to the county clerk as delinquent.

The sheriff is required by KRS 134.191 to report and pay to the taxing districts by the tenth of each month all taxes collected during the preceding month. We recommend the sheriff maintain copies of all franchise bills mailed, including bank franchises. The sheriff should also maintain franchise folders which detail when franchise bills are paid and the amount collected. We also recommend the sheriff attempt to collect unpaid bank franchise bills or turn the bills over to the county clerk as delinquent.

Sheriff's Response: The sheriff cannot possibly pay a bill he did not receive. For every bill received, disbursements were made. We are not responsible for bills that have never been to or have already left our office.

Auditor's Reply: Two instances were noted in which the sheriff collected franchise taxes but did not distribute the funds to the taxing districts. On October 8, 2014, the sheriff received \$12,561 in bank franchise tax receipts. These funds should have been distributed to the taxing district by November 10, 2014. On January 12, 2015, the sheriff received \$5,185 in franchise tax receipts that should have been distributed by February 10, 2015. The sheriff did not write checks disbursing these funds.

The sheriff did not distribute interest payments to the school and the fee account: The sheriff did not distribute interest earned on tax collections to either the school or the fee account. The sheriff did not implement proper internal control procedures that ensured interest was paid to the fee and tax account monthly. By not paying interest monthly, the sheriff was not in compliance with statutes. KRS 134.140(2) requires the sheriff to pay monthly, "that part of the investment earnings for the month which are attributable to the investment of school taxes[.]" KRS 134.140(4) requires the remaining monthly interest to be transferred to the sheriff's fee account. We recommend the sheriff implement procedures to ensure the sheriff pay the amount of interest due to the school and fee account on a monthly basis.

Sheriff's Response: We are working diligently to correct this matter by the date listed above. (12/21/18)

The sheriff did not distribute 10% add-on fees on a monthly basis: The sheriff collected \$9,727 in 10% add-on fees for 2014 property tax collections. The sheriff did not implement proper internal control procedures that ensured add-on fees were paid to the fee account monthly. By not distributing add-on fees monthly, the sheriff was not in compliance with statutes. KRS 134.119(7) states, “the sheriff shall be entitled to an amount equal to ten percent (10%) of the total taxes due plus ten percent (10%) of the ten percent (10%) penalty for all delinquent taxes.” This fee shall be added to the total amount due and paid by the person paying the delinquent tax bill and then distributed to the sheriff’s fee account monthly. Additionally, KRS 134.191 requires the sheriff to submit reports of the amount of taxes and other funds collected by the tenth day of each month and to pay the amounts collected to the appropriate district. We recommend the sheriff distribute add-on fees as required.

Sheriff’s Response: Add-on fees reflect only monies owed to the sheriff’s department for commissions. Tax program did not take excess fees into consideration. Money is still in the accounts and no monies are unaccounted for.

The sheriff did not prepare the annual settlement of tax collections timely: The annual tax settlement was not presented to and approved by the fiscal court until October 8, 2015. The sheriff did not implement proper control procedures to ensure the county settlement was prepared timely. By not preparing the county settlement timely, the sheriff was not in compliance with statutes. KRS 134.192 requires each sheriff to annually settle his tax accounts on or before September 1 of each year. Furthermore, the annual settlement shall be filed in the county clerk’s office and approved by the governing body of the county no later than September 1 of each year. The settlement shall show the amount of taxes collected and disbursed for the county, school district, and all taxing districts. We recommend the sheriff’s office comply with KRS 134.192 by timely preparing an annual tax settlement.

Sheriff’s Response: Our quarter ends on September 30th, therefore we do not always have all of our financial information available when the court meets in September. We always have our report ready for the first meeting after September 30.

Auditor’s Reply: The sheriff turned over the 2014 property taxes to the county clerk on May 16, 2015. The sheriff had three and a half months to prepare the county settlement and present the settlement to the fiscal court by September 1, 2015.

The sheriff did not settle his 2013 tax account: The sheriff did not settle his 2013 tax account. The sheriff failed to oversee the daily operations of his tax office. As a result, the following receivables and liabilities should be collected and paid:

Cash in Bank		\$	0
Due From 2016 Fee Account			6
Receivables:			
State	\$	769	
County		2,108	
School		2,854	
Library		415	
Extension		490	
Soil Conservation		89	
2014 Fee Account For Commission Overpayment		1,652	
2014 Fee Account For Check Purchase		242	
			<u> </u>
Total Assets			8,619
Unpaid Obligations:			
Health		5,633	
State Gas and Oil		498	
County Gas and Oil		586	
Health Gas and Oil		303	
Extension Gas and Oil		1,294	
Interest Due Sheriff's 2014 Fee Account		199	
Interest Due School		112	
			<u> </u>
Total Unpaid Obligations			<u>8,625</u>
Total Fund Balance		\$	<u>0</u>

Failure to pay liabilities timely causes taxing districts and other governmental agencies to be deprived of funds for significant time periods. After all receivables are collected and all liabilities are paid, the sheriff will be able to close his 2012 Fee account. KRS 134.192 states, “[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year.”

KRS 64.820 states:

- (1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.
- (2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

We recommend the sheriff collect all receivables and pay all the liabilities to close this account.

Sheriff's Response: We are working diligently to address this matter by the date listed above. (12/21/18)

The sheriff used 2012 tax surplus money to operate his office: The sheriff had a tax surplus of \$5,685 in his 2012 tax account. The 2012 tax audit directed the sheriff to turn over the unexplained tax surplus money to the Kentucky State Treasurer. However, on September 7, 2016, the sheriff transferred this tax money into his 2016 operating account. The sheriff failed to direct his staff to follow the recommendations of the 2012 tax audit. As a result, the 2016 fee account owes \$5,685 to the Kentucky State Treasurer for 2012 tax surplus funds. When the sheriff has unexplained receipts in the tax account, the money should be turned over the Kentucky State Treasurer in accordance with KRS 393.090 and KRS 393.110. We recommend the sheriff pay \$5,685 of tax surplus money from his 2016 fee account to the Kentucky State Treasurer for unexplained tax receipts.

Sheriff's Response: This matter was addressed and explained in a previous response. This involves December payroll being paid using January Funds.

Auditor's Reply: The sheriff's 2014 tax account did not and should not pay payroll. Tax accounts and operating accounts were maintained in separate bank accounts. The sheriff transferred surplus tax money into his operating account.

The sheriff did not settle his 2011 tax account: The sheriff had a cash balance of \$2,092 in his 2011 tax account. Of this amount, \$520 is due to the Kentucky State Treasurer as tax surplus money and \$1,572 is due to the sheriff's 2012 tax account for commissions earned. However, on September 7, 2016, the sheriff transferred the balance of the 2011 tax account into his 2016 operating account. The sheriff failed to direct his staff to follow the recommendations of the 2011 tax audit. As a result, the 2016 fee account owes \$520 to the Kentucky State Treasurer for 2011 tax surplus funds. Tax commissions of \$1,572 are also due to the 2012 fee account from the 2016 fee account. Failure to pay liabilities timely causes governmental agencies to be deprived of funds for significant time periods. After all liabilities are paid, the sheriff will have settled his 2011 tax account.

KRS 134.192 states, "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year."

We recommend the sheriff take the necessary steps to settle his 2011 tax account by paying commission of \$1,572 to the 2012 fee account and \$520 to the Kentucky State Treasurer as unexplained tax receipts.

Sheriff's Response: We are working diligently to correct this matter by the date listed above. (12/21/18)

The sheriff failed to eliminate the deficit in his 2010 tax account: The sheriff has a deficit of \$2,961 in his 2010 tax account. On September 7, 2016, the sheriff's bookkeeper transferred the remaining cash balance of \$4,056 from the 2010 tax account to his 2016 operating account. The

remaining tax money should have been allocated to the taxing districts detailed in the Magoffin County 2010 Tax Settlement Audit. Deficits are primarily due to undeposited receipts. In order to settle the account, the sheriff should collect and pay the following:

Cash in Bank	\$ 0
Due From 2016 Fee Account	<u>4,056</u>
Total Assets	4,056
Unpaid Obligations:	
County	\$ 1,143
School	3,788
Health	242
2010 Refunds Paid By 2011 Fee Due 2011 Fee	498
2010 Unmined Coal Deposit Error Due 2011 Fee	1,169
Commission Due 2011 Fee Account	<u>177</u>
Total Unpaid Obligations	<u>7,017</u>
Total Fund Deficit	<u><u>\$ (2,961)</u></u>

Because the sheriff transferred 2010 tax account money into his 2016 operating account, the 2016 fee account owes the 2010 tax account \$4,056. In addition, failure to pay liabilities timely causes taxing districts and other governmental agencies to be deprived of funds for significant time periods. After all receivables are collected and all liabilities are paid, the sheriff will be able to close his 2010 tax account. KRS 134.192 states, “[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year.”

Furthermore, KRS 64.820 states:

- (1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.
- (2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

In order to pay the liabilities due the districts and the other accounts noted above, \$2,961 should be collected from the sheriff personally and deposited into the 2010 tax account. We recommend the sheriff collect all receivables and pay all the liabilities to close this account.

Sheriff's Response: We are working diligently to correct this matter by the date specified above. (12/21/18)

The sheriff's responsibilities include collecting property taxes, providing law enforcement and performing services for the county fiscal court and courts of justice. The sheriff's office is funded through statutory commissions and fees collected in conjunction with these duties.

The audit report can be found on the [auditor's website](#).

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