



Auditor of Public Accounts  
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**FOR IMMEDIATE RELEASE**

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**Harmon Releases Audit of Magoffin County Sheriff's Fee Account**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2019 financial statement of 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 financial statement presents fairly the receipts, disbursements and excess fees of the Magoffin County Sheriff in accordance with accounting principles generally accepted in the United States of America. The sheriff's financial statement did not follow this format. However, the sheriff's financial statement is fairly presented in conformity with the regulatory basis of accounting, which is an acceptable reporting methodology. This reporting methodology is followed for all 120 sheriff audits in Kentucky.

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:

**Significant Internal Revenue Service (IRS) penalties and interest from past years continue to accumulate and need to be settled with the IRS:** This is a repeat finding and was included in the prior year audit report as Finding 2018-004. The current amount of IRS penalties is \$62,935. The office manager stated that these penalties and interest have not been paid because they would be classified as unallowable expenditures and the sheriff has no other means to pay these penalties and interest. In addition, she has not received any invoices or letters from the IRS since March 2020 and the figures reported in the 2018-004 and 2019-001 findings are the most current to date. The penalties date back from December 2011, two quarters for 2013, all four quarters of 2014 and

2015, and the first quarter of 2016 for a total amount due is \$62,935. See the table below for the breakdown of the 12 invoices that the sheriff's office received from the IRS.

#### Summary of IRS Penalties and Interest

<b>Tax Period</b>	<b>Tax Form</b>	<b>Amount Due</b>	<b>Notice Date</b>
December 31, 2011	CVL PEN	\$ 1,506.46	March 16, 2020
September 30, 2013	941	3,236.34	March 16, 2020
December 31, 2013	941	13,369.70	March 16, 2020
March 31, 2014	941	10,062.96	March 16, 2020
June 30, 2014	941	10,469.12	March 16, 2020
September 30, 2014	941	8,719.05	March 16, 2020
December 30, 2014	941	7,228.43	March 16, 2020
March 31, 2015	941	1,563.15	March 16, 2020
June 30, 2015	941	1,670.44	March 16, 2020
September 30, 2015	941	1,335.18	March 16, 2020
December 31, 2015	941	1,977.63	March 16, 2020
March 31, 2016	941	1,796.80	March 16, 2020
<b>Total</b>		<b><u>\$ 62,935.26</u></b>	

The sheriff's office lacked proper internal controls related to paying the taxes due on the 941 tax forms timely from the last calendar quarter in 2011 through the first calendar quarter in 2016. The employee/employer payroll taxes have been paid, but not timely. Since these payroll taxes were not paid timely, the IRS assessed penalties and taxes on the late payment of these payroll taxes. The sheriff's office, who stated that if these penalties and interest were paid, they would be deemed unallowable expenses from the fee account; therefore, the sheriff has no way to pay them.

By not paying the penalties and interest, they will continue to increase every year causing a larger cash flow burden on Magoffin County taxpayers.

IRS Publication 15, Section 11. Depositing Taxes states:

"Generally, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes."

- "There are two deposit schedules—monthly and semiweekly—for determining when you deposit social security, Medicare, and withheld federal income taxes. These schedules tell you when a deposit is due after a tax liability arises. Your tax liability is based on the dates payments were made or wages were paid."
- "Penalties may apply if you don't make required deposits on time or if you make deposits for less than the required amount."
- For amounts not properly or timely deposited, the penalty rates are as follows.

Penalty	Charged For....
2%	Deposits made 1 to 5 days late
5%	Deposits made 6 to 15 days late.
10%	Deposits made 16 or more days late, but before 10 days from the date of the first notice the IRS sent asking for the tax due.
10%	Amounts that should have been deposited, but instead were paid directly to the IRS, or paid with your tax return. But see Payment with return, earlier in this section, for exceptions.
15%	Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.

Late deposit penalty amounts are determined using calendar days, starting from the due date of the liability.

IRS Publication 15, Section 12. Filing Form 941 or Form 944 states:

- **Penalties.** For each whole or part month a return isn't filed when required, there is a failure-to-file (FTF) penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due. Also, for each whole or part month the tax is paid late, there is a failure-to-pay (FTP) penalty of 0.5% per month of the amount of tax. For individual filers only, the FTP penalty is reduced from 0.5% per month to 0.25% per month if an installment agreement is in effect. You must have filed your return on or before the due date of the return to qualify for the reduced penalty. The maximum amount of the FTP penalty is also 25% of the tax due. If both penalties apply in any month, the FTF penalty is reduced by the amount of the FTP penalty. The penalties won't be charged if you have a reasonable cause for failing to file or pay. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.
- **Note.** In addition to any penalties, interest accrues from the due date of the tax on any unpaid balance.

We recommend the fiscal court, sheriff, and the county attorney meet and work out a plan to settle these amounts with the IRS.

*County Sheriff's Response: We have exhausted every avenue trying to resolve this matter. We have been unsuccessful. These are penalties only. No actual tax is owed.*

**The sheriff did not settle prior years' fee accounts:** The sheriff's office closed several past accounts before completely satisfying amounts due to and from various accounts associated with the sheriff's operations and collections. As such, prior years' fee accounts have the following receivables and liabilities that should have been satisfied with related excess fees submitted to the fiscal court:

#### 2011 Fee Account

Receivables:

Commissions Due From 2010 Tax Account

\$ 1,169

Due From 2010 Tax For Refunds Paid	498
Commissions Due From 2010 Unmined Coal Tax Account	6,026
Interest Due From 2010 Unmined Coal Tax Account	37
Add-on Fees Due From 2010 Unmined Coal Tax Account	2,059
Due From Payroll Account	<u>2,385</u>
Total Due Fiscal Court As Of December 31, 2019	<u>\$ 12,174</u>

#### 2012 Fee Account

##### Receivables:

Due From Payroll Account For Balance As Of 12/31/2012	\$ 6,061
Due From 2013 Fee Account For January 2013 Payroll Paid From 2012 Fee	4,674
Due From Deposit Of 2012 Excess Fees Into 2017 Fee Account	<u>58,543</u>
Total Due Fiscal Court As Of December 31, 2019	69,278
Less Amount Submitted To The Fiscal Court On 10/19/21	<u>2,575</u>
Total Due Fiscal Court As Of March 16, 2022	<u>\$ 66,703</u>

#### 2013 Fee Account

##### Receivables:

Sheriff Add-on Fees Due From 2012 Tax Account	\$ 5,688
Interest Due From 2012 Tax Account	162
Commission Due From 2012 Tax Account	497
Interest Due From 2012 Unmined Coal Tax Account	4
Payroll Due From 2014 Payroll Account For January 2014 Payroll	10,954
Delinquent Tax Commissions Due From 2014 Fee Account	603
Payroll Ending Cash Balance As Of December 31, 2013	1,211
Due From Payroll Account For Transfer	3,110
Due From Calendar Year 2016 Fee Account	<u>10,571</u>
Total Assets	32,800

##### Liabilities:

Due 2012 Fee Account For January 2013 Payroll	(4,674)
Due 2013 Fee Account For January Payroll	(896)
Due 2013 Fee Account For Delinquent Tax Payments	(2,637)
Due Payroll Account For 2014	(40)
Due To Sheriff For Unpaid Salary	(358)
Occupational Tax Due The City Of Salyersville	(640)
Retirement Withholdings Due Magoffin County Fiscal Court	<u>(16,373)</u>
Total Liabilities	<u>(25,618)</u>
Total Due Fiscal Court As Of December 31, 2019	<u>\$ 7,182</u>

## 2014 Fee Account

### Receivables:

Due From 2015 Fee Account For January Payroll	\$ 11,928
Due From 2015 Fee Account For Prisoner Transport	<u>630</u>

Total Assets 12,558

### Liabilities:

Due 2013 Fee Account For January 2014 Payroll	(7,844)
Due 2013 Fee Account For Delinquent Tax Commissions	(602)
Due 2013 Fee Account For Delinquent Tax Payments	(252)
Due Payroll Revolving Account For Payroll Liabilities	<u>(30,246)</u>

Total Liabilities (38,944)

Total Deficit Due From Sheriff As Of December 31, 2019 \$ (31,862)

The sheriff did not reconcile all accounts properly and submitted excess fees after the prior years' periods of performance were completed. Also, proper internal controls were not in place to ensure that annual settlements were presented to the fiscal court and excess fees submitted timely.

Amounts due to and from various fee, tax, and payroll accounts were not properly settled before the sheriff's office closed prior years' accounts, thereby leaving unsettled receivables and liabilities involving several accounts.

Good internal controls dictate a documented review of the financial activity, which includes the settlement of fee accounts as well as closing no longer utilized accounts.

We recommend the sheriff meet with the fiscal court to determine an actionable settlement beneficial to all parties involved.

*County Sheriff's Response: As far as we and the fiscal court are concerned, these accounts have been settled.*

**The sheriff's office lacks adequate segregation of duties:** This is a repeat finding and was included in the prior year audit report as Finding 2018-007. The sheriff's office lacks adequate segregation of duties and internal controls over operations within the entity largely due to limited resources from a restricted budget and partially due to not implementing viable internal control procedures. The office manager and deputies collect tax receipts. The office manager or deputy prepares daily bank deposits, reconciles daily receipts to the daily collection report, and posts items to the receipts ledger. The office manager prepares month-end tax reports, prepares checks for tax distribution, and posts checks to the disbursements ledger. Checks require both the signature of the sheriff and the office manager. However, no documentation is maintained to determine who performed said reconciliation or if the sheriff reviewed it.

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 to the best extent possible within the realm of limited resources and a restricted budget. 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.

*County Sheriff's Response: This is a common comment for most small offices. We will try to segregate duties as best we can.*

**The sheriff's fourth quarter report is materially misstated:** The sheriff's fourth quarter report does not include receivables and liabilities that occurred after the end of the calendar year. Therefore, several transactions that were disregarded resulted in material adjustments to be made.

By disregarding receivables and liabilities after the end of the calendar year, the sheriff's fourth quarter report does not sufficiently reflect his office's financial position and creates a situation that could misrepresent the amount of funds due the fiscal court when settling the account.

It is imperative that the sheriff's fourth quarter report appropriately reflects the financial position of his office and the amount of funds that are due to the fiscal court to enable sound financial operations within the government entity as a whole.

We recommend the sheriff account for receivables and liabilities that occur after the calendar year ends to sufficiently represent the financial position of his office.

*County Sheriff's Response: 4<sup>th</sup> Quarter Report was matched perfectly with my receipts log and bank statements as of 12/31/2019. Activity in the account after 12/31/19 (receivables & payables) caused changes in these balances, so they no longer matched the 4<sup>th</sup> Quarter report.*

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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