



Auditor of Public Accounts
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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 2021 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:

The sheriff has 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 2020-001. The total amount of IRS penalties is \$63,935. 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, 2019-001, and 2020-001 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

Tax Period	Tax Form	Amount Due	Notice Date
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
Total		<u>\$ 62,935.26</u>	

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: These are late fees the IRS refuses to waive. No actual tax is owed.

Auditor's Reply: As stated, we recommend the fiscal court, sheriff, and the county attorney meet and work out a plan to settle these amounts with the IRS.

The sheriff failed to properly settle multiple prior accounts and comingled funds from several accounts: This is a repeat finding and was included in the prior year audit report as Finding 2020-002. The Magoffin County Sheriff has not properly settled the 2011, 2012, 2013, and 2014 fee accounts. The sheriff closed the prior year accounts and deposited all the funds into the 2017 fee account. The sheriff did not follow the procedures provided in detailed schedules per the prior audit reports to properly settle these accounts. Per the prior year audit report the amounts due the fiscal court for 2011, 2012 and 2013, and the ending deficit for 2014 are as follows:

- 2011 - \$12,174
- 2012 - \$66,703
- 2013 - \$7,182
- 2014 - (\$31,862)

The sheriff's office instead deposited the remaining balances of these accounts into the 2017 fee account. When closing the 2017 account the Magoffin County Sheriff wrote a check of \$64,440 on October 19, 2021, to the fiscal court as excess fees for the prior accounts.

The sheriff did not follow the guidelines to settle prior year accounts. Furthermore, he comingled funds within these accounts instead of following the recommendations of prior audit to properly settle each account. As a result, excess fees were not properly remitted to fiscal court and a deficit remains unresolved. Taxpayers cannot be assured the sheriff's prior fee and tax accounts were properly settled

KRS 134.192(11) states, "[i]n counties containing a population of less than seventy thousand (70,000), the sheriff shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year, which includes: (a) A complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and (b) A complete statement of all expenditures of his or her office, including his or her salary, compensation of deputies and assistants, and reasonable expenses." KRS 134.192(12) states, "[a]t the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810. The provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830."

Additionally, KRS 64.820(1) states, "[t]he 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." KRS 64.820(2) states, "[i]n 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 consult with the county attorney and the fiscal court to come up with a solution to resolve the comingling of prior accounts, properly settle those accounts, and resolve any unpaid deficits.

County Sheriff's Response: I have settled these accounts to the best of my ability. The Fiscal Court recognizes the work I have done and have accepted the funds I have turned over to them. Both the Sheriff's Office and the Fiscal Court agree this matter has been settled to their satisfaction.

Auditor's Response: As stated, we recommend the sheriff consult with the county attorney and the fiscal court to come up with a solution to resolve the comingling of prior accounts, properly settle those accounts, and resolve any unpaid deficits.

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 2020-003. The sheriff's office lacks adequate segregation of duties and internal controls. The bookkeeper and/or office manager was responsible for collecting money, preparing deposits, writing checks, posting to ledgers, performing and maintaining monthly bank reconciliations, and maintaining bank statements and financial reports.

The sheriff did not implement an adequate internal control system to allow for the proper segregation of duties. When you do not segregate 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 and protects the county taxpayer funds.

Good internal controls dictate the same employee should not receive payments, prepare deposits, and post to the receipt ledger. The same employee should not prepare monthly reports, sign checks and post to the disbursement ledger. Also, same employee should not deposit funds, sign checks, post to ledgers, prepare bank reconciliations, and monthly reports.

We recommend the sheriff's office implement an adequate internal control system and segregate duties. 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. The sheriff should take on the responsibility of preparing or reviewing the daily deposits, receipt and disbursement 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 adequately provide internal control.

County Sheriff's Response: We are a small office with limited employees. We segregate duties as much as we can.

The sheriff's fourth quarter report was materially misstated: This is a repeat finding and was included in the prior year audit report as Finding 2020-004. The sheriff's fourth quarter report was materially misstated and do not sufficiently reflect the financial position of his office. The fourth quarter report had \$54,623 of receipts and \$21,316 of disbursements that was not posted to the report.

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.

Proper internal controls require 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.

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: My 4th quarter balanced perfectly and my bank account still balances perfectly. No report is made after 12/31, so my reports can't reflect changes after that date.

Auditor's Response: We recommend the sheriff's office seek training from the Department for Local Government on how to prepare an accurate fourth quarter report per the guidelines set out by the *County Budget Preparation and State Local Finance Officer Policy Manual*. The fourth quarter report requires the sheriff to show any accounts receivable and unpaid obligations as of December 31.

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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