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

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2022 financial statement of former 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 former Magoffin County Sheriff in accordance with accounting principles generally accepted in the United States of America. The former sheriff's financial statement did not follow this format. However, the former 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 findings:

The former sheriff did not properly handle state and federal asset forfeiture funds: During the calendar year, the former sheriff transferred federal forfeiture funds in the amount of $32,391 and $6,195 in state forfeiture funds to his fee account. By transferring the funds to the fee account and not keeping documentation of how the funds were spent, we were not able to determine if the funds were spent in accordance with the statute and regulations covering these funds. In addition, the former sheriff did not prepare an annual report for the federal forfeiture funds.

The former sheriff did not implement controls to ensure that state and federal asset forfeiture funds were properly handled. Without the implementation of these controls, the former sheriff did not follow the procedures outlined in the guidance set forth in the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. The failure to follow this guidance could result in a non-compliance of federal forfeiture funds.

The U.S. Department of Justice's (DOJ) *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* requires "[a]ll participating state and local law enforcement agencies must implement standard accounting procedures and internal controls [e.g., tracking share requests and receipts, electronically depositing shares and internal controls into a separate revenue account or accounting code] that are consistent with the guidelines set forth below to track equitably shared funds and tangible property." Those procedures must be consistent with those set by the DOJ: "No other funds may be commingled in these accounts or with these accounting codes." In addition, the federal guide lists allowable and unallowable uses of these funds.

KRS 218A.420(4)(a) states, "Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes[.]"

We recommend the sheriff's office improve controls over the federal and state forfeiture accounts and ensure compliance with all applicable guidelines. In addition, we recommend that the sheriff contact the DOJ to seek guidance on how to handle these forfeiture funds being commingled with fee account funds.

Former Sheriff's Response: The former official did not provide a response.

The former sheriff had significant Internal Revenue Service (IRS) penalties and interest from past years that 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 2021-001. The total amount of IRS penalties is $62,935. The former 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 had 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 audit findings are the most current to date. The penalties date back from December 2011 and include, two quarters for 2013, all four quarters of 2014 and 2015, and the first quarter of 2016 for a total amount due of $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	$ 1,507	March 16, 2020
September 30, 2013	941	3,236	March 16, 2020
December 31, 2013	941	13,370	March 16, 2020
March 31, 2014	941	10,063	March 16, 2020
June 30, 2014	941	10,469	March 16, 2020
September 30, 2014	941	8,719	March 16, 2020
December 30, 2014	941	7,228	March 16, 2020
March 31, 2015	941	1,563	March 16, 2020
June 30, 2015	941	1,670	March 16, 2020
September 30, 2015	941	1,335	March 16, 2020
December 31, 2015	941	1,978	March 16, 2020
March 31, 2016	941	1,797	March 16, 2020
Total		$ 62,935	

The former 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 had been paid, but not timely. Since these payroll taxes were not paid timely the IRS assessed penalties and taxes on the rate payment of these payroll taxes. The former sheriff's office stated that if these penalties and interest were paid, they would be deemed unallowable expenses from the fee account had 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.

Penality	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, the former sheriff, and the county attorney meet and work out a plan to settle these amounts with the IRS.

Former Sheriff's Response: The former official did not provide a response.

The former 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 2021-002. The former Magoffin County Sheriff has not properly settled the 2011, 2012, 2013, and 2014 fee accounts. The former sheriff closed the prior year accounts and deposited all the funds into the 2017 fee account. The former 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 former 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 former 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 reports 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 former 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 former 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.

Former Sheriff's Response: The former official did not provide a response.

The former sheriff's fourth quarter report was materially misstated: This is a repeat finding and was included in the prior year audit report as Finding 2021-004. The former sheriff's fourth quarter report was materially misstated and did not sufficiently reflect the financial position of his office. The fourth quarter report had $34,908 of receipts and $23,237 of disbursements that were not posted to the report.

The former 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 having to be made. By disregarding receivables and liabilities after the end of the calendar year, the former sheriff's fourth quarter report did not sufficiently reflect his office's financial position and created a situation that could misrepresent the amount of funds due the fiscal court when settling the account.

Proper internal controls require that the former sheriff's fourth quarter report appropriately reflect 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's office account for receivables and liabilities that occur after the calendar year ends to sufficiently represent the financial position of the office.

Former Sheriff's Response: The former official did not provide a response.

The former sheriff's office did not have adequate segregation of duties: This is a repeat finding and was included in the prior year audit report as Finding 2021-003. The sheriff's office did not have adequate segregation of duties and internal controls. The former 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 former 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 receipts ledger. The same employee should not prepare monthly reports, sign checks and post to the disbursements ledger. Also, the same employee should not deposit funds, sign checks, post to ledgers, prepare bank reconciliations, and prepare 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, 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 adequately provide internal control.

Former Sheriff's Response: The former official did not provide a response.

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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