



Auditor of Public Accounts  
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**FOR IMMEDIATE RELEASE**

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**Harmon Releases Audit of Powell County Sheriff's Tax Settlement**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the sheriff's settlement – 2018 taxes for Powell County Sheriff Danny Rogers. 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 17, 2018 through April 15, 2019 in conformity with the regulatory basis of accounting.

Finding 4 of the audit report will be referred to the Kentucky Office of the Attorney General and the Department of Revenue for further review.

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 Powell County Sheriff's Office does not have adequate segregation of duties:** This is a repeat finding and was included in the prior year audit report as Finding 2017-002. The sheriff's office does not have adequate segregation of duties. The sheriff's bookkeeper collects payments

from customers, prepares deposits, writes checks, posts transactions to the receipts ledger, posts checks to the disbursements ledger, and prepares monthly and quarterly reports. The sheriff or another employee did not document oversight of any of these activities. A lack of oversight could result in misappropriation of assets or inaccurate financial reporting to external agencies such as the Department of Revenue.

The segregation of duties over various accounting functions such as opening mail, preparing deposits, recording receipts and disbursements, and preparing monthly reports, or the implementation of compensating controls is essential for providing protection from asset misappropriation and inaccurate financial reporting. Additionally, proper segregation of duties protects employees in the normal course of performing their daily responsibilities.

We recommend the sheriff separate the duties involved in receiving cash, preparing deposits, writing checks, posting to ledgers, preparing monthly bank reconciliations, and comparing financial reports to ledgers. If this is not feasible due to budgetary constraints, compensating controls could be implemented and documented by the individual performing the procedure.

*County Sheriff's Response: Payments are taken by Sheriff and other Clerk and both have been active in making deposit and counting money, adding checks and reviewing bank statements and monthly reports. Bank Statements are reconciled and initialed.*

**The Powell County Sheriff did not include all required information on his annual franchise tax settlement:** The sheriff presented his annual franchise tax settlement to the fiscal court on June 11, 2019, but it only included the grand total for taxes collected and commissions, and the amounts paid to each taxing district. The sheriff was unaware that his settlement should include a detailed listing of the amount of franchise taxes collected for the county, the school district, and all taxing districts, and an itemized statement of the money disbursed to or on behalf of the county, the school district, and all taxing districts.

As a result, the sheriff's annual franchise tax settlement was materially misstated. Material audit adjustments were required to correct the sheriff's annual franchise settlement to include all required category amounts listed above for each taxing district.

Proper controls over the preparation of the sheriff's annual franchise tax settlement would ensure the appropriate itemization of these taxes are included on the sheriff's annual franchise tax settlement. Further, KRS 134.192(5) states, in part, "[t]he settlement shall show the amount of ad valorem tax collected for the county, the school district, and all taxing districts, and an itemized statement of the money disbursed to or on behalf of the county, the school district, and all taxing districts."

We recommend the sheriff implement controls to ensure that all franchise taxes collected and disbursed for each taxing district are included in an itemized statement on his annual franchise tax settlement in the future.

*County Sheriff's Response: Since 2018 this matter has been resolved.*

**The Powell County Sheriff did not properly report and distribute franchise tax collections:**

The Powell County Sheriff received franchise tax collections in October 2018. However, these collections were not reported on the monthly tax report until November and were not paid to the taxing districts until December. Additionally, the sheriff did not turn over three delinquent franchise bills to the county clerk as required. This was caused by a lack of oversight by the sheriff.

Failure to distribute tax collections to the proper districts when required delays monies due the districts which could be used to operate their offices. In addition, failure to turn over delinquent franchise tax bills to the county clerk is a violation of KRS 134.122.

KRS 134.191 requires the sheriff to report, by the tenth day of each month, the amount of taxes, fines, forfeitures, or other monies collected by him for the preceding month. KRS 134.191(3) states, “[a]t the time of making the report, the sheriff shall pay to the county treasurer or other officer designated by the governing body of a county, to the department, and to any other district for which the sheriff collects taxes, all funds belonging to the county, the state, or the district that were collected during the period covered by the report.” KRS 134.122(1)(a) states, in part, “[t]he sheriff shall, on April 15 or three (3) months and fifteen (15) days from the date the taxes were due under an alternative collection schedule, file all tax claims on real and personal property remaining in his or her possession with the county clerk[.]”

We recommend the sheriff properly report and distribute all tax collections received in the proper timeframe by adhering to KRS 134.191 and turn over all remaining franchise bills to the county clerk as delinquent in accordance with the tax collection schedule.

*County Sheriff's Response: October is a busy time and the Franchise was overlooked and then paid out the next month. As far a turning over delinquent Franchise there are many opinions from different auditors. However we did not turn those over and tried to collect.*

Auditor's Reply: As stated, KRS 134.122(1)(a) states, “[t]he sheriff shall, on April 15 or three (3) months and fifteen (15) days from the date the taxes were due under an alternative collection schedule, file all tax claims on real and personal property remaining in his or her possession with the county clerk...”

**The Powell County Sheriff did not have adequate internal controls in place to ensure guidelines for penalty and add-on fee waivers were followed and did not apply discounts properly:**

The Powell County Sheriff did not have adequate internal controls in place to ensure compliance with the proper guidelines for granting penalty and add-on fee waivers to certain taxpayers. Additionally, the sheriff applied discounts to collections that did not meet the criteria to receive a discount, specifically, six instances were noted in which the discount was misapplied on the last day of collections, including bills in the sheriff's name and the sheriff's bookkeeper's name. Finally, the sheriff failed to maintain proper documentation of waiver forms.

Per the guidance of KRS 134.015, taxpayers may receive a 2% discount for paying tax bills in full by November 1 of the assessment year. Taxes paid in full between November 2 and December 31 of the assessment year are paid at “face value,” meaning the total amount of tax calculated is paid. Taxes paid in full between January 1 and January 31 of the year following the assessment year

shall be subject to a penalty of 5% of the taxes due and unpaid. Taxes paid after January 31 of the year following the assessment year shall be subject to a penalty of 10% of the taxes due and unpaid. (KRS 134.015(2)(c),(d))

Additionally, KRS 134.119(7) states, “[a]s additional compensation for the collection of delinquent taxes, 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 shall be paid by the person paying the tax claim if payment is made to the sheriff, or the certificate of delinquency or personal property certificate of delinquency if payment is made after the tax claim has been filed with the county clerk.”

The sheriff can accept bills that are received in the mail with a proper postmark as if those bills were actually paid on that date (KRS 134.119). Therefore, there will inevitably be bills that are received a few days after the cut-off date of the collection periods that are processed as if those bills were received in a different period. Our test results account for postmarked bills and these have not been reported in the totals.

The tax collection schedule for the Powell County Sheriff was as follows:

Discount Period: if paid by November 30, 2018
Face Period: if paid by December 31, 2018
5% Penalty Period: if paid by January 31, 2019
21% Penalty Period: if paid after January 31, 2019

As outlined in the following table, numerous tax bills were noted in which a discount was applied outside the applicable discount period, or a penalty/add-on fee was waived without showing reasonable cause as is required to be documented when waivers are granted. Specifically, there were 44 documented instances of misapplied discounts and waivers totaling \$2,237. Of this, we noted several misapplied discounts and waived penalties/add-on fees for the sheriff and taxpayers that have a personal connection to the sheriff's office such as other elected officials, sheriff's office employees, sheriff's special deputies, and relatives of the sheriff, employees, or special deputies.

Add-on fees waived without proper documentation	\$	758
5% penalties waived without proper documentation		362
10% penalties waived without proper documentation		676
Discounts misapplied in face/penalty period		<u>441</u>
Total undocumented waivers of add-on fees/penalties and misapplied discounts	\$	<u>2,237</u>

According to the sheriff, he was unaware of the statutory, regulatory, and manual guidelines in place for penalty waivers or discounts. By waiving penalties and add-on fees of persons not having shown reasonable cause, the sheriff has denied taxing districts and his office monies that could have been used for governmental services and operating the sheriff's office. Additionally, penalty waivers, add-on fee waivers, and discounts have not been applied consistently to all taxpayers.

It is the responsibility of the sheriff's office to implement internal controls to ensure all property taxes and all applicable penalties are collected in accordance with statutes. The sheriff can consider the 10% penalty and 10% sheriff's fee for a waiver under certain guidelines. KRS 131.175 allows for the waiver of penalties when there is shown reasonable cause.

KRS 131.010(9) defines reasonable cause as "an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of money due the department pursuant to law or administrative regulation." Further, Section 103 KAR 1:040 clarifies "reasonable cause" and outlines specific circumstances that constitute reasonable cause. If a waiver is granted, the waiver form should be maintained by the sheriff's office at least until that particular collection year has been audited by the State Auditor's Office.

KRS 134.015 outlines the tax collection schedule, and the circumstances under which discounts may be applied to property tax bills.

We recommend the sheriff establish internal control procedures and implement proper oversight to ensure the requirements of KRS 131.175 and KRS 134.015 are followed. This finding is being referred to the Kentucky Office of the Attorney General and the Department of Revenue for further review.

*County Sheriff's Response: Was unaware that the Waiver Forms need to be filled out during tax collections due to it being so busy this was an oversight. We will prepare forms for the future.*

**The Powell County Sheriff has not settled prior year accounts:** Per prior year audits 2014 through 2017, the sheriff had various receivables and liabilities to settle the tax and fee accounts for each year. During our audit period, the sheriff settled all significant receivables and liabilities and closed all old tax and fee accounts. The balances in tax and fee accounts for 2014, 2016, and 2017 were transferred to the 2015 tax account, which resulted in an ending balance of \$11,144 in the 2015 tax account. This entire amount is due the fiscal court as additional excess fees resulting from the balances of fee accounts for 2014, 2016, and 2017 being transferred to the 2015 tax account.

The sheriff did not have adequate controls in place to ensure receivables and liabilities for old accounts were settled correctly and timely. Furthermore, the sheriff did not implement adequate oversight procedures for following up on old accounts to ensure corrective action had been taken as instructed in prior audit periods.

The sheriff has a balance in the 2015 tax account that is related to fee account liabilities. The entire balance in the 2015 tax account of \$11,144 (plus any accrued interest), is due the fiscal court as additional excess fees for 2014, 2016, and 2017. In addition to being a violation of statute, failure to settle and close accounts for extended periods of time increases the risk of theft, loss, or misappropriation of funds.

KRS 134.192(1) 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 pay the balance in the 2015 tax account to the county treasurer, settle any amount due as determined in fee audits, and close the account as soon as possible.

*County Sheriff’s Response: Checks have been prepared and signed and will be distributed and once they clear the bank the account will be closed.*

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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