



**EXAMINATION OF SELECTED PROPERTY
TAX COLLECTION ISSUES IN
JOHNSON COUNTY**

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EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS

December 21, 1999

To the People of Kentucky

The Honorable Paul E. Patton, Governor
The Honorable Tucker Daniel, Johnson County Judge/Executive
The Honorable Bill Witten, Johnson County Sheriff
The Honorable Betty Jo Conley, Johnson County Clerk
Mike Haydon, Secretary, Kentucky Revenue Cabinet

RE: Johnson County Delinquent Property Taxes

Ladies and Gentlemen:

Our office received an allegation through our 1-800-KY-ALERT hotline that the Johnson County Clerk and her husband had not paid property taxes for several years on real estate owned in Johnson County. In the process of investigating this complaint, we noted that Johnson County routinely had one of the Commonwealth's highest delinquency rates for property tax collections. Accordingly, we initiated an examination encompassing the following objectives:

- To determine whether the Johnson County Clerk and her husband owe delinquent property taxes, and in what amounts;
- To determine what methods the Johnson County Sheriff employed to collect delinquent taxes in the County, and to what effect; and
- To determine the impact on property tax collections if reasonable, additional collection efforts were made by county sheriffs.

To achieve our objectives, we obtained delinquent tax information from the Kentucky Revenue Cabinet, the Johnson County Sheriff, the Johnson County Clerk's office, and analyzed audited county property tax settlements. We also interviewed officials from Johnson County and the Revenue Cabinet.

To the People of Kentucky
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Our report findings and recommendations are intended to improve the efficiency and effectiveness of the property tax collection process. We wish to thank the Johnson County officials and the Revenue Cabinet for their cooperation during the course of our examination.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ed Hatchett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Edward B. Hatchett, Jr.
Auditor of Public Accounts

EBHJr:kct

Findings and Recommendations

The Clerk Should Pay All Property Taxes Due On Property Owned

Johnson County Clerk Betty Jo Conley had five delinquent 1989 tax bills totaling \$922 on properties owned jointly with her husband, Wallace Conley. Upon notification by the office of the Auditor of Public Accounts, Ms Conley provided a copy of a receipt indicating the face amount of these tax bills, totaling \$821, was paid December 2, 1999.

Mr. Conley and two co-owners have not paid the taxes due on another parcel of real property for the period 1984 through 1998. The unpaid tax on this property for the 15-year period totals \$2,490. We note that the clerk and/or her husband paid tax bills on 12 other properties for each of the three tax years 1996 through 1998.

In addition, the clerk's son and daughter-in-law owe delinquent property taxes totaling \$2,240 for 1996 and 1997 tax bills. We note that the clerk's daughter-in-law is employed as a deputy clerk in the county clerk's office.

The official duties of the county clerk include recording certificates of delinquency and receiving delinquent tax payments for the county. As the elected official entrusted with the maintenance, accuracy, and oversight of delinquent tax records, the clerk has a responsibility to ensure that her own property taxes are paid when due.

Recommendation

We recommend the County Clerk remit the overdue taxes and refrain from allowing her taxes to become delinquent in the future.

The Former Sheriff Did Not Use All Available Means To Collect Delinquent Taxes

Former Johnson County Sheriff Don McFaddin did not use all means available to him to collect Johnson County's delinquent property taxes. According to the audited financial statements, the Johnson County Sheriff had a property tax collection delinquency rate of:

- 11.20 percent for 1994 with \$400,840 in uncollected tax bills;
- 9.14 percent for 1995 taxes with \$334,073 uncollected; and
- 11.80 percent for 1996 taxes with \$426,989 uncollected.

In contrast, the statewide average of delinquent property taxes for 1994 through 1996 was 2.49 percent. Johnson County's delinquent tax rate exceeded the state's average by more than four times.

Sheriffs may pursue collection of delinquent taxes by distraint or by attachment

Kentucky Revised Statutes (KRS) allow the sheriff to pursue collection of delinquent taxes by distraint or by attachment. Distraint is an action by which the sheriff seizes personal property, such as bank accounts or wages, without invoking the jurisdiction of the court. KRS 134.430 states: "All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale..." by the sheriff. Pursuant to KRS 135.010, the sheriff may also attach funds, owed to the delinquent taxpayer, which are in the hands of a third party. The property is attached, thereby freezing assets, until a judicial hearing is held and a resulting court order directs payment to the sheriff.

KRS 134.020 requires the sheriff to make "additional reasonable collection efforts" when real property tax delinquencies exceed 15 percent. If the sheriff fails to initiate additional procedures, the Revenue Cabinet may then assume collection duties. Despite this statutory threshold, the collection options described above are available to the sheriff for any delinquent tax bill. Given the consistently high delinquency rate in Johnson and other counties, a sheriff should make these reasonable collection efforts before advertising the delinquent property tax bills for sale.

Sheriff Witten's efforts have resulted in additional collections of \$279,000 in Johnson County

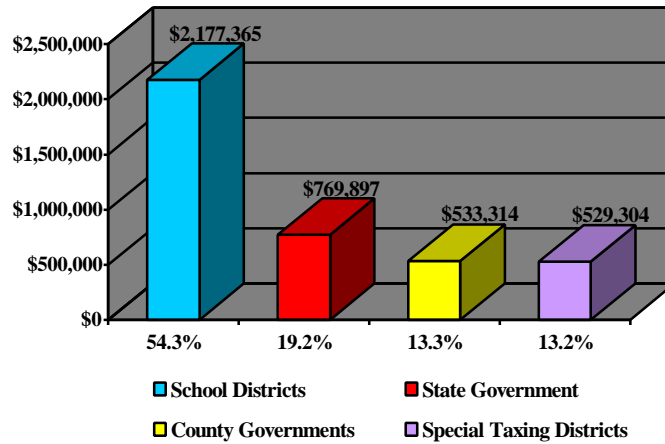
Johnson County Sheriff Bill Witten, who took office in January 1999, instituted aggressive measures to collect delinquent 1998 taxes with the full support of the Johnson County Judge/Executive, Fiscal Court, and Kentucky Revenue Cabinet. On August 10, 1999, he issued an order to the four local banks to distraint the bank accounts of delinquent taxpayers. Sheriff Witten also secured an attachment order from Johnson Circuit Court. The Sheriff's records indicate that delinquent property tax collections totaled nearly \$279,000 between August 10 and September 23, 1999, at which time the sheriff ceased collecting 1998 property taxes in order to deliver the remaining delinquent tax bills to the county clerk. These collections reduced Johnson County's delinquency rate to about 3%, approximately the state average for delinquent property taxes.

Similar collection efforts in other counties could result in millions of additional tax dollars

For tax year 1996, the latest period for which complete records are available, 26 county sheriffs had delinquent property tax rates exceeding five percent. The delinquent property taxes of these 26 counties totaled just over \$6.2 million. Had these sheriffs successfully applied additional collection procedures to reduce the counties' delinquency rates to 3%, as in Johnson County for 1998 taxes, over \$4 million in additional property taxes would have been collected for distribution among local school districts, state and county governments, and special taxing districts.

The chart below illustrates the distribution of the additional tax dollars that could be collected.

Distribution of Over \$4 Million in 1996 Additional Property Tax Collections



Source of Information: Property Tax Distribution Calculated From the 1996 Audited Sheriff Tax Settlements

Recommendation

We commend Sheriff Witten for his exemplary collection efforts that resulted in hundreds of thousands of dollars in additional tax revenue. We recommend that the Kentucky Revenue Cabinet sponsor, through the Kentucky Sheriffs Association, training to instruct its members on the various methods for improving property tax collections.

Tax Bills Are Routinely Late

Johnson County was more than a year behind in distributing property tax bills in 1996

KRS 134.020 establishes the property tax collection schedule for all counties. Since 1984, Johnson County has lagged behind the established schedule, at times by more than a year. The tax schedule should start by September 15 of each year with the delivery of the tax bills from the county clerk to the sheriff. Failure to distribute tax bills on time can cause considerable budgetary hardship to the local school districts, the county government, and to the special districts that are dependent on property taxes as their primary revenue source. Inconsistent timing in the issuance of the tax bills could also be a factor in the high delinquency rate in the county as taxpayers may be unable to adequately plan and budget to pay their taxes.

The timeliness of distributing property tax bills has improved each year since 1996

Johnson County tax bills for 1999 were distributed on November 1, 1999, or approximately six weeks behind the prescribed tax calendar. The timeliness of distributing the Johnson County tax bills has improved each year since 1996, at which time the county was 13 months behind schedule in distributing tax bills and collecting the tax. The tax calendar prescribed by KRS 134.020 allows taxpayers to pay at a discount from September 15 until November 1, then allows until the end of the year to pay the face amount of the tax bill. The 1999 tax collection period in Johnson County allows 30 days for payment at a discount, and 30 days for payment at the face amount. This schedule will allow the county to be essentially caught up to the state's prescribed tax calendar when the unpaid tax bills become delinquent on January 1, 2000.

Recommendation

We recommend the Johnson County Sheriff continue to work with the Revenue Cabinet, the property valuation administrator, and other local officials to keep the county on the prescribed tax schedule. Distribution of the tax bills by September 15 will allow Johnson County taxpayers the full discount and face amount periods in which to pay their property taxes.

JOHNSON COUNTY CLERK RESPONSE



EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS
FRANKFORT, KENTUCKY 40601-3448

TO WHOM IT MAY CONCERN:

IN RESPONSE TO THE DRAFT DELIVERED TO ONE OF MY DEPUTY CLERK'S ON DECEMBER 6, 1999, CONCERNING 1989 TAX BILLS IN THE NAME OF WALLACE AND BETTY JO CONLEY. THIS MATTER WAS BROUGHT TO MY ATTENTION ON DECEMBER 1, 1999 BY A PHONE CALL FROM THE STATE AUDITOR'S OFFICE, BRIAN LYKINS, DIRECTOR DIVISION OF EXAMINATION AND INFORMATION TECHNOLOGY. AT THIS TIME I TOLD MR. LYKINS THAT MY HUSBAND NEEDED TO EXPLAIN THIS SITUATION THAT I DID NOT TAKE CARE OF THE BILLS. I TOLD HIM AT LEAST FOUR TIMES AND GAVE HIM THE PHONE NO. WHERE MY HUSBAND WAS AT. MY HUSBAND ALWAYS TRYS TO PAY THE PROPERTY TAX IN OUR NAMES SO HE WILL GET HIS DISCOUNT. WHY WOULD HE HAVE PAID THE OTHER TAX IN OUR NAME AND NEGLECTED TO PAY THE 1989? ON THE MORNING OF DECEMBER 2, 1999, ROBIN RATLIFF, A DEPUTY CLERK IN THE CLERK'S OFFICE CALLED TOM CRAWFORD, IN DEPT. OF TAXATION AND HE TOOK THE BILLS DOWN TO FACE VALUE AT WHICH TIME MR. CONLEY PAID THE BILLS IN FULL. ENCLOSED YOU WILL FIND A COPY OF THE PAID TAX BILLS. PLEASE ADVISE ME IF THERE IS ANYTHING ELSE I NEED TO DO CONCERNING THE TAX BILLS IN WALLACE & BEETY JO CONLEY, WHICH WERE PAID ON DECEMBER 2, 1999.

JOHNSON COUNTY SHERIFF RESPONSE



Johnson County Sheriff Department

342 Second Street • Paintsville, KY 41240 • Office: (606) 789-3411 • Fax: (606) 789-2574



WILLIAM D. "BILL" WITTEN
Sheriff

December 9, 1999

Honorable Edward B. Hatchett, Jr.
Auditor of Public Accounts
144 Capitol Annex
Frankfort, Kentucky 40601-3448

Dear Mr. Hatchett:

I am writing in response to your letter in regard to Johnson County Delinquent Property Taxes in which you report on the results of an examination by your office into certain allegations and conditions which have or which may have existed in Johnson County with respect to property tax delinquencies.

While I do not believe that it is incumbent upon me to comment on your findings and recommendations in regard to either the Johnson County Clerk or my predecessor as Sheriff of Johnson County, I do believe that every property owner, whether elected public official, county employee or not, should pay all taxes accrued when due and payable and, holders of a public office, should honor their obligations and duties in endeavoring to collect all outstanding taxes.

With respect to your reference to distraint as a statutory method of tax collection available to the Sheriff under KRS 134:430, I am in complete agreement with your assessment of this method of tax collection as both legal and effective. However, as you may be aware, the Kentucky Bankers Association had advised its members not to honor actions by a sheriff taken pursuant to this law. Consequently, I would encourage your office or that of the Kentucky Revenue Cabinet to seek an Opinion of the Attorney General or, in the alternative, to pursue a Declaratory Judgement action in which the status of this law is clarified by the judiciary of the Commonwealth.

I very much appreciate your commendation of my efforts at collecting taxes in Johnson County for our various taxing districts. However, although I was merely doing one of the duties required of me as Sheriff of Johnson County, I could not have reached the high percentage of collection for 1998 taxes had I not had the unswerving support of

the Johnson County Judge Executive, its Fiscal Court, the Johnson County and Paintsville Independent School District, the Kentucky Revenue Cabinet and a majority of the citizens of Johnson County.

Be assured that I will continue to work with all state and local agencies in maintaining the highest possible percentage of collection of delinquent taxes. In addition, if my experience in this respect can be of any assistance to the Kentucky Sheriff's Association, the Kentucky Revenue Cabinet or your office, I will certainly make myself available.

Sincerely,



Bill Witten
Johnson County Sheriff

Cc: Honorable Paul E. Patton, Governor
Honorable Tucker Daniel, Johnson County Judge Executive
Honorable Betty Jo Conley, Johnson County Clerk
Honorable Sara Jane Schaaf, Secretary, Kentucky Revenue Cabinet

AUDITOR'S REPLY

AUDITOR'S REPLY

**Auditor of Public Accounts' Reply to the Johnson County Clerk's
Response to this Examination Report**

The Auditor's Office attempted to schedule an exit conference with Johnson County Clerk Betty Jo Conley on two occasions to discuss the findings in this report. However, Ms Conley declined our requests.

As Ms Conley stated in her written response, her husband paid their 1989 delinquent tax bills on December 2, 1999, one day after the Auditor's Office contacted her about the matter. The Revenue Cabinet agreed to accept the face amount of the tax bills, which totaled \$821.98 rather than the advertised delinquency amount of \$921.68, which included a 10 percent penalty as required by KRS 134.020 and the sheriff's advertising fee.

These tax bills had aged beyond the period of time allowed for collection through litigation. Therefore, the Cabinet could not technically enforce payment of the delinquent tax bills. The Cabinet, in attempting to maximize revenue collection, should assess the likelihood of collecting the full amount of property tax bills before accepting only the face amount from delinquent taxpayers.