

1. PURPOSE OF THIS DOCUMENT

Following the submissions made at the Consultative Forum by SASS and SANAPS regarding amendments to the Form 16, the SABFS has embarked on this project based thereon in order to provide feedback to the Forum as determined by the SABFS.

The following are the proposed changes made by the Associations and considered by the SABFS:

- Expanding the recoverable expenses to include more line items;
- Decreasing/increasing the cap of 20%
- Including of normal operating expenses like salaries, office rent, and many others;

2. LEGAL BASIS AS PER THE SHERIFFS ACT 90 OF 1986

A. Section 19 of the Sheriffs Act states:

- [1] Every sheriff shall annually on or before the prescribed date pay the prescribed levy to the Board;
- [2] Different levies may be prescribed under subsection (1) in respect of different categories of acting sheriffs.

B. Regulations 6: Levies Payable to the Board :

Levies payable to Board

- (1) For the purposes of section 19(1) of the Act every sheriff shall annually, on or before 31 July or within 30 days after vacating his or her office, pay to the Board a levy of 1,5 percent of his or her net income of the preceding financial year, ending on the last day of February.
- (3) The levy referred to in sub regulation (1) shall be accompanied by a statement in which the sheriff or acting sheriff sets out the following details: (a) The gross income received by his or her office during the period mentioned in the said sub regulation (1); [Para. (A) substituted by GN R256 of 1 March 1999.] (b) his net income; (c) the amounts, which must be specified and must not exceed 20 percent of his or her gross income, deducted from his or her gross income to calculate his or her net income; [Para. (c) substituted by GN R1293 of 5 December 2008 and amended by GN R742 of 14 September 2011.] (d) the amount of the levy payable to the Board.

'gross income' means-

- (a) the total amount, in cash or otherwise, received by or accrued to a sheriff in terms of Part II of Table C of Annexure 2 of the rules promulgated under section 25 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), read with section 6(3) of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), and in terms of the tariff in rule 68 of the rules promulgated under section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), read with section 6(3) of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985); and
- (b) any other income derived in his or her capacity as sheriff in terms of any law or otherwise; [Definition of 'gross income' substituted by GN R1293 of 5 December 2008 and by GN R742 of 14 September 2011.]

'net income' means gross income after deduction of the actual expenses incurred by sheriff in respect of advertisements with regard to sales in execution and in respect of postage, telephone calls, control and possession of goods, tending of livestock, removal and storage of goods and the employment of a locksmith to open any door or piece of furniture;

3. CURRENT METHOD OF CALCULATION- FORM 16

FORM 16 CALCULATION	
Gross income for the period	R 0.00
Less: Actual expenses (incurred in respect of returns of service) in respect of:-	
(i) Advertising (wart. Sales in execution)	R 0.00
(ii) Postage	R 0.00
(iii) Telephone Calls.	R 0.00
(iv) Control and Possession of goods	R 0.00
(v) Tending of livestock	R 0.00
(vi) Removal and storage of goods	R 0.00
(vii) Employment of Locksmith	R 0.00
Total of actual expenses incurred	R 0.00
<i>Regulation 14(b) of Regulation No: 2374345 of 2011 of the Sheriffs Act 90 of 1986, the Sheriffs expenses</i>	R 0.00
Net income : (Gross Income less total of actual expenses up to a maximum of 20%)(see definition of "net income " in Regulation 1 as amended by Regulation 4 of Regulation No: Amount of levy due to the Board (1.5 % of <u>net income</u>)	R 0.00
Plus 15 % VAT	R 0.00
TOTAL LEVIES DUE	R 0.00

4. BACKGROUND: SUB COMMITTEES DELIBERATION AND FINAL RECOMMENDATION TO THE BOARD

- 4.1 The sub-committee analyzed the proposals from the sheriffs' profession and in particular investigated the impact the various proposed line items would have on Form 16 and the income of the Board.
- 4.2 It further deliberated on the advantages and disadvantages of including certain of the line items as proposed by the associations, especially the items that form a major part of the income of a sheriff's office e.g. travelling and rental.
- 4.3 The committee also deliberated on possible difficulties in the sheriff substantiating deductions for certain line items.
- 4.4 In addition; the Committee deliberated on the following compliance aspects in order to understand the reporting processes of the proposed changes in line with the Act.
- i. Availability of the reporting mechanisms by the sheriff;
 - ii. Proper control and availability of information on the part of the Sheriff;
 - iii. Updated accounting practices and sheriffs software programs for reporting purposes
 - iv. Processing of returns of service/invoicing
 - v. Honesty and proper recording of figures
 - vi. The dynamics that affect the different categories of sheriffs eg.rural and urban, small, medium and large offices and how the proposed line items would affect each of the different categories
 - vii. The envisaged benefit for both the sheriff and the Board
 - viii. Delay/timeous issuing of Fidelity Fund certificates should there be discrepancies with the information included in Form 16.

5. OUTCOME OF THE ABOVE DELIBERATION

5.1 After an in-depth discussion and a number of meetings held on the above eight points, the committee agreed that including additional line items to Form 16 without proper control of the input and output data from the sheriffs when completing Form 16 of Phase 1 of the Legal Obligations and the added burden on the sheriffs to include proper figures for each of the line items, together with the limited resources available at the Board to ensure proper compliance, the committee decided to introduce another possible scenario that it felt would make the process much more easier and would yield a more positive result in terms of reaching the desired outcome anticipated by the profession.

6. PROPOSED RECOMMENDED CHANGES TO FORM 16

- 6.1 All expenses as listed on Form 16 together with the proposed additional line items to fall away;
- 6.2 No expenses will be used in the calculation of the levies due to the Board;
- 6.3 The cap of 20% will also fall away;
- 6.4 Levies payable to the Board to be calculated on the gross income only;
- 6.5 The committee deliberated on a few scenarios as per the annexed document that explains the different calculations in terms of percentages that could be considered.
- 6.6 Refer to point 4 of the annexure to understand the possible percentage that could be allocated and the savings for the sheriff together with the impact this would have on the Board's income.
- 6.7 In order for the profession to benefit from the exercise and for the Board to ensure that it remains financially sustainable, the Committee agreed to recommend to the Board that Form 16 be amended by removing the provision to include expenses and only calculate levies based on a percentage of the gross income earned by the sheriff for the financial year.
- 6.8 The committee agreed that the future calculation of levies to the Board would be 1.1 percent of the sheriff's gross income.
- 6.9 The scenario used in the annexure outlines the benefit of the recommendations.
- 6.10 Form 16 schedule to amended.

7. BOARD APPROVED METHOD TO CALCULATE LEVIES DUE AS PER RECOMMENDATION FROM THE SUB COMMITTEE ON FORM 16

Following the above deliberations on the submissions made on Form 16, the Board has resolved as follows:-

- 7.1 Calculation of levies will be based on a percentage of the gross income as determined by the Board from time to time.
- 7.2 The use of the gross income is a simpler manner to calculate the amount of levies due by the sheriff;
- 7.3 It only uses the gross income as currently declared by the sheriff;
- 7.4 The 1.1 percentage agreed on was determined to ensure a saving to the profession and the SABFS would sacrifice some income ~~in the amount of R990,458 per annum.~~
- 7.5 After careful review and deliberation, the Board has approved the calculation for levies based on 1.1 percent of ONLY THE GROSS INCOME of the sheriff.

To: Sub Committee Form 16

From: Mr Murugan and Ms Sigenu

Date: January 2021

RE: Review of Form 16 - Levies payable to the SABFS

- 7.6 The Board also resolved that the recommendation be canvassed with the profession via the Consultative Forum;
- 7.7 The Regulations to the Sheriffs Act should be amended and the SABFS will attend to same.
- 7.8 Other stakeholders to be informed by the SABFS;
- 7.9 The new method will be implemented once approved by all stakeholders and upon the Sheriffs Act being amended accordingly.

SOUTH AFRICAN BOARD FOR SHERIFFS
PROPOSED - FORM 16
STATEMENT OF LEVIES PAYABLE TO THE BOARD FOR THE PERIOD
1 MARCH xxxx TO 28/29 FEBRUARY xxxx
(Regulation 6 of the Regulations relating to Sheriffs, 1990)



I, (Name of sheriff)

Sheriff for **(Respective office)**

hereby declare that the information below is to the best of my knowledge true and authentic.

Gross income for the period

01 MARCH xxxx

to

28/29 FEBRUARY xxxx

Amount of levy due to the Board (1.1 % of Gross Income)

Plus 15% VAT

TOTAL LEVIES DUE

CONDITIONS

1 This statement must be signed by the sheriff personally.

2 Please note the definition of "gross income " and "net income " respectively, in Regulation 1 as amended by Regulation 4 of Regulation No: 34605 of 2011 and Regulation 3 of Regulation No: 31658 of 2008 respectively. Only the actual expenses - recovered by way of returns of service - should be deducted to determine net income, i.e. "NET INCOME means gross income after deduction of the actual expenses incurred by sheriff in respect of advertisement with regard to sales in execution and in respect of postage, telephone calls, control and possession of goods, tending of livestock, removal and storage of goods and the employment of a locksmith to open any door or piece of furniture,

(Definition of Net income to be deleted, and that of Gross income to remain the same)

3 the above expenses MUST NOT EXCEED 20% of the Sheriffs Gross Income.

(This line item to be deleted)

4 In terms of the Regulations relating to Sheriffs, 1990 as amended by Regulation No:31658 of 2008 , it is an offence to furnish details or information or to make a statement which is false or misleading.

5 Should the Board have doubt about the correctness of any information furnished, it can order an inspector (appointed in terms of section 56 of the Act) to visit a sheriff's office and to act in terms of the provisions of section 57 of the Act. The Board reserves the right to require documentary proof of deductions.

(The B)oard reserves the right to require documentary proof of deductions.) - To be deleted

6 Sheriffs and Acting Sheriffs must submit the statement for each financial year up to the end of February.

7 By appending my signature hereto I affirm the conditions supra

.....