



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

Attn: [REDACTED]

FINAL RULING NO. 2010-89  
December 9, 2010

Savings and Loan Association Tax Assessment  
as of January 1, 2009

### FINAL RULING

The Department has examined the savings and loan association return (Form 62A600) of [REDACTED] ("[REDACTED]") for 2009 and determined that the value of [REDACTED]'s taxable capital as of January 1, 2009 was \$ [REDACTED] instead of the \$ [REDACTED] value reported by [REDACTED] on that return. The upshot of this determination or assessment was that [REDACTED] owed an additional \$ [REDACTED] due to its underreporting of the value of its taxable capital by \$ [REDACTED]. See KRS 136.290; 136.300(1).

[REDACTED] has since paid the entire amount of tax due on the Department's assessment of the value of the taxable capital. This payment includes the additional \$ [REDACTED] referred to above. [REDACTED] has not withdrawn its protest of this assessment to the extent it included the additional \$ [REDACTED]. This protest stated:

It is our understanding that the Department is utilizing the amount of deposits as reported by the FDIC. The difference between those amounts is related to escrows. We do not believe that an escrow is properly includable in the taxable capital by the statutes and regulations governing the Savings and Loan Tax.

The savings and loan association tax is imposed pursuant to KRS 136.290 and 136.300. Under KRS 136.290(1),

[e]very federally or state chartered savings and loan association, savings bank, and other similar institutions operating solely in Kentucky shall, during January of each year, file with the Department of Revenue a report containing such information and in such form as the department may require.

Pursuant to KRS 136.290(1),

[t]he department shall fix the total value, as of January 1 of each year, of the capital of each financial institution included in subsection (1) of this section. Capital shall include certificates of deposit, savings accounts, demand deposits, undivided profits, surplus, and general reserves, excepting the share of borrowing members where the amount borrowed equals or exceeds the amount paid in by those members. For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or 136.310 or that is exempt from state taxation by federal law. The department shall immediately notify each institution of the value so fixed.

[REDACTED]'s protest is hereby denied. There is no exemption from taxation provided for escrow accounts in the applicable statutes referred to above. Exemptions from taxation are disfavored and will not be presumed or implied, but must instead be clearly set forth in the law. LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.2d 472, 475 (Ky. 2004). The savings and loan assessment for 2009 issued by the Department to [REDACTED] is entirely correct.

This letter is the final ruling of the Kentucky Department of Revenue.

### APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the

Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.


The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,  
FINANCE AND ADMINISTRATION CABINET

  
E. Jeffrey Mosley  
Interim Executive Director  
Office of Legal Services for Revenue