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Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2013-03
January 11, 2013

Motor Vehicle Usage Tax Assessment and
Ad Valorem Tax Assessments
for 2010, 2011, and 2012

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued a motor vehicle usage ("MVUT") assessment for the tax year 2009 and motor vehicle property or ad valorem tax ("MOTAX") assessments to [REDACTED] for the tax years 2010, 2011 and 2012. These assessments relate to a 2004 Fleetwood American Eagle recreational vehicle ("the Fleetwood") and have been protested by [REDACTED]. The following schedule reflects the total underpayments of tax represented by these assessments, including penalties and applicable interest that has accrued to January 11, 2013 and will continue to accrue until the assessments are paid:

Type Tax	Tax Due	Interest to 01/11/13	Penalty	Total
MVUT	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Type Tax	Period	Tax Due	Interest to 01/11/13	Penalty	Total
MOTAX	2010	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOTAX	2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOTAX	2012	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTALS (MOTAX)		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
GRAND TOTAL (MOTAX & MVUT)		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] resides at [REDACTED], Kentucky. He is a resident of Kentucky, files Kentucky income tax returns, and possesses a valid Kentucky driver's license. [REDACTED] purchased the Fleetwood from [REDACTED] (" [REDACTED] ") in [REDACTED], Kentucky on [REDACTED], 2009. The purchase order executed with Days reflects a purchase price in the amount of \$ [REDACTED] after a \$ [REDACTED] allowance for the trade-in of another vehicle that had been owned by [REDACTED]. [REDACTED], LLC ("the LLC") was handwritten at the top of the purchase order on the purchaser line; however, [REDACTED] signed at the bottom of the purchase order as "buyer". [REDACTED] failed to register the motor home in Kentucky and to pay the MVUT for the use of the vehicle in Kentucky in accordance with KRS 138.460. The vehicle was registered in the state of [REDACTED] after the purchase; however, there is no indication that the vehicle has ever been used in [REDACTED] nor has any proof of any use in [REDACTED] been presented to the Department by [REDACTED].

The Department issued appropriate MVUT and MOTAX assessments to [REDACTED] based on the purchase price of the Fleetwood and his status as a resident of the Commonwealth at the time of purchase. On [REDACTED], 2011, [REDACTED] submitted a completed questionnaire requested by the Department's Miscellaneous Tax Division, accompanied by a copy of [REDACTED]'s proof of insurance information reflecting the LLC as the insured, and a 2010 Schedule C Profit or Loss From Business in the name of [REDACTED] as the proprietor of the LLC.

The Department, upon review of the relevant information, determined that [REDACTED] possessed a valid Kentucky operators' license and thus was a Kentucky resident in light of KRS 186.010(12), which states in part:

Possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima facie evidence that the operator is a resident of Kentucky.

The MVUT is imposed by KRS 138.460(1), which states:

A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.

KRS 138.460 (2) (b) states in part that for a used vehicle the MVUT is due upon the transfer of the title or registration of that vehicle. Registration of the vehicle in this state was clearly required under KRS 186.020(1), which states:

Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with administrative regulations promulgated by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days.

See also KRS 186A.065 (requiring the owner of a motor vehicle to apply for a Kentucky certificate of title in his name before operating that vehicle in this state).

██████████ contends that the creation of the LLC and subsequent titling of the RV in the LLC's name in ██████████ absolves him of liability for the Kentucky MVUT. The LLC was formed for the sole purpose of holding title to the Fleetwood and avoiding Kentucky's MVUT and MOTAX, created on ██████████, 2009, shortly before the Fleetwood's ██████████, 2009 purchase. The insurance on the vehicle was issued by ██████████ in the name of ██████████ and the LLC with the address of the insured under that policy listed as ██████████'s address in ██████████, Kentucky. ██████████ argues that registration of the vehicle in ██████████ creates the presumption that the Fleetwood is located in that state. However, the mileage records ██████████ has provided to the Department demonstrates that the Fleetwood has never been used in ██████████. Therefore, the conclusion is inescapable that the Fleetwood was kept at ██████████'s residence and used in Kentucky.

Thus, it is clear that ██████████ has used the LLC as an alter ego or a mere instrumentality of himself. Therefore, it is entirely appropriate and proper for the Department to "pierce the veil" of the LLC and impose liability for the MVUT directly upon the LLC's member, ██████████. See, e.g., White v. Winchester Land Dev. Corp. 584 S.W.2d 56 (Ky. App. 1979). In addition, the transaction between ██████████ and the LLC was a sham and should be disregarded so that the MVUT law may be properly applied. See, e.g., Gregory v. Helvering 293 U.S. 465 (1935). Under the sham transaction doctrine, a transaction shall be disregarded or treated as invalid when it has no legitimate or valid business purpose and has been consummated only for the purpose of evading liability for taxes. Accordingly, ██████████ is liable for the MVUT.

As noted above, MOTAX assessments have also been issued to [REDACTED] for 2010, 2011 and 2012. Based upon the foregoing, the Fleetwood had a taxable situs in Kentucky during the years in question and should have been listed for ad valorem taxation in Kentucky. See KRS 132.190(1) and (3); 132.220(1); Ky. Const. §§ 3, 170, 172, and 174. [REDACTED]'s failure to list or register the Fleetwood or apply for a certificate of title for it rendered it omitted property and thus subject to ad valorem tax assessment as such by the Department. KRS 132.290; 132.310; 132.320. No complaint has been made as to the fair cash value assigned to the Fleetwood for the years in question by the assessments. For the reasons previously stated above, any transaction or transfer purporting to vest ownership of or title to the Fleetwood in the LLC was a sham. [REDACTED] was the real owner of the Fleetwood for the years in question and was certainly in possession of it in Kentucky during the years in question.

A penalty has been assessed pursuant to KRS 131.180(2) because [REDACTED] did not pay the MVUT in a timely manner. Penalties have also been assessed pursuant to KRS 132.290(4) because the Fleetwood was not listed for MOTAX purposes by [REDACTED] for any of the tax years in question. [REDACTED] has not offered anything that would show or suggest that these penalties were erroneously assessed or that [REDACTED] should be relieved of liability for these penalties.

Therefore, the outstanding MVUT and the MOTAX assessments in the amount of \$[REDACTED] plus applicable interest and penalties are legitimate liabilities of [REDACTED] due the Commonwealth of Kentucky.

This letter is the final ruling of the 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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[REDACTED]

