

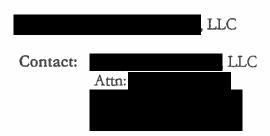
STEVEN L. BESHEAR Governor

PINANCE AND ADMINISTRATION CABINET DEPARTMENT OF REVENUE

501 HIGH STREET FRANKFORT, KENTUCKY 40620 Phone (502) 564-3226 Fax (502) 564-3875 www.kentucky.gov LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:



FINAL RULING NO. 2013-42 July 12, 2013

Motor Vehicle Usage Tax Assessment and Property or Ad Valorem Tax Assessments for 2008, 2009, 2010, 2011, 2012 and 2013

FINAL RULING

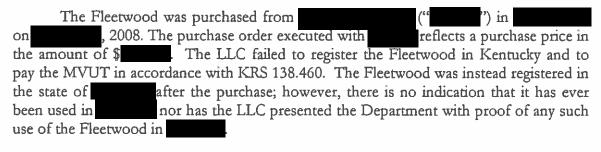
The Kentucky Department of Revenue ("the Department") has an outstanding motor vehicle usage tax ("MVUT") assessment and motor vehicle property or ad valorem tax ("MOTAX") assessments for the tax years 2008 through 2013 against LLC ("the LLC"). These assessments relate to a 2003 Fleetwood Excursion recreational vehicle ("the Fleetwood"). The following schedule reflects the total underpayments of tax represented by these assessments, including applicable interest accrued to July 12, 2013 as well as penalties:

Type Tax	Тах	Interest as of	Penalty	Total as of
	<u> </u>	7/12/2013	l	7/12/2013
Motor Vehicle	\$	\$	\$	\$
Usage				
TOTALS	\$	\$	\$	\$



July 12, 2013 – Final Ruling No. 2013-42 Page 2

Type Tax	Period	Tax Due	Interest as of	Penalty	Total as of
			7/12/13		7/12/13
MOTAX	2009	\$	\$	\$	\$
MOTAX	2010	92	\$	\$	\$
MOTAX	2011	\$	\$	\$	\$
MOTAX	2012	\$	\$	\$	\$
MOTAX	2013	\$	\$	\$	\$
TOTALS	_	\$	\$	\$	\$
(MOTAX)	-			<u> </u>	\
GRAND					
TOTAL					
(MOTAX					
and MVUT)					
	-	\$	\$	\$	\$



The LLC's sole member is the LLC's He is a resident of Kentucky, files Kentucky income tax returns, and holds a Kentucky motor vehicle operator's license. He transacts all or most of the business relative to the LLC or the Fleetwood from his home in Kentucky. Thus, the LLC's principal place of business was and is in Kentucky.

Based upon the foregoing, the LLC was a resident of Kentucky, not and should have registered the Fleetwood in Kentucky and paid MVUT thereon. KRS 138.460(1) and (2); 186.010(1).

In response, contends that the Fleetwood was not kept or used in Kentucky. He does acknowledge that it was in Kentucky once, during July, 2011. He has not offered persuasive evidence to support his contention that the Fleetwood is not otherwise kept or operated in Kentucky. Instead, he has provided only his own uncorroborated statements and those of two other individuals. No documentation has been provided to verify or substantiate these statements.

A tax assessment is presumed to be valid and correct, with the burden resting upon the LLC to prove otherwise. <u>See, e.g., Revenue Cabinet v. Gillig, 957 S.W.2d 206, 209-10 (Ky. 1997)</u>; <u>Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955)</u>. The LLC has failed to

July 12, 2013 – Final Ruling No. 2013-42 Page 3

provide persuasive evidence to overcome the presumption of the assessment's validity and correctness and to carry its burden of proving that the assessment is invalid or incorrect.

As noted above, MOTAX assessments have also been issued to the LLC for 2009, 2010, 2011, 2012 and 2013. Based upon the foregoing, the Fleetwood also had a taxable situs in Kentucky for ad valorem tax purposes during these years and thus 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. The LLC'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. Finally, no complaint has been made as to the fair cash value assigned to the Fleetwood for the years in question by the assessments.

What has been stated above with respect to the MVUT assessment equally applies to these MOTAX assessments. The LLC has failed to back up its contention that the Fleetwood was not used or kept in Kentucky with persuasive evidence. Again, it has provided no documentation to support or substantiate the bare statements of and two other individuals.

A penalty has been assessed pursuant to KRS 131.180(2) because the LLC 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 the LLC for any of the tax years in question. The LLC has not offered anything that would show or suggest that these penalties were erroneously assessed or that the LLC should be relieved of liability for these penalties.

Therefore, the outstanding MVUT and the MOTAX assessments in the amount of plus applicable interest and penalties are legitimate liabilities of LLC 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:

July 1 2, 2013 – Final Ruling No. 2013-42 Page 4

- 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 Mesley

Interim Executive Director

Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED