



STEVEN L. BESHEAR
Governor

FINANCE 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:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2014-05
January 17, 2014

Motor Vehicle Usage Tax Assessment

FINAL RULING

[REDACTED] (" [REDACTED] ") paid the motor vehicle usage tax ("MVUT") on a 2004 Mercedes Benz E500 at the time he registered this vehicle with the [REDACTED] County Clerk ("the Clerk"). While retaining the Kentucky vehicle registration, [REDACTED] has now requested a refund of the MVUT, which was denied by the Kentucky Department of Revenue ("the Department"). [REDACTED] then protested the denial of the refund. See generally KRS 134.580(3).

The following schedule provides a breakdown of the taxes and fees that [REDACTED] paid at the time of vehicle registration on [REDACTED], 2012:

Type Tax/Fee	Tax/Fees Paid	Refund Requested/Denied
MVUT	\$ [REDACTED]	\$ [REDACTED]
ADJ REG CC FEE	\$ [REDACTED]	\$ [REDACTED]
STATE TITLE FEE	\$ [REDACTED]	\$ [REDACTED]
CC TITLE FEE	\$ [REDACTED]	\$ [REDACTED]
ADJ REG CC FEE	\$ [REDACTED]	\$ [REDACTED]
ADJ REG STATE FEE	\$ [REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]	\$ [REDACTED]

██████████ purchased the vehicle, and then registered it with the clerk on ██████████, 2013. At the time of registration, ██████████ signed an "Affidavit of Nonhighway Use," Form 72A007 ("the Affidavit"), and filed it with the Clerk. He stated that the vehicle was purchased and is currently located in ██████████ and has not been driven on Kentucky roads. However, at the same time, ██████████ sought to have his vehicle licensed in Kentucky, so he completed the registration process and received the applicable Kentucky license plate. ██████████ asserts that he has not used this vehicle on Kentucky highways and therefore does not owe the Kentucky MVUT, even though he insists on maintaining the vehicle registration for over the road use in this state.

The Department disagrees. ██████████ maintains a Kentucky domicile; he owns a home located at ██████████, Kentucky. He also files Kentucky individual income tax returns every year as a Kentucky resident. See 141.010(17)(defining "resident" for purposes of filing income tax returns as a Kentucky resident to include "an individual domiciled within this state"). Indeed, ██████████ has expressly stated to Department personnel that he registered his motor vehicle in Kentucky in order to help maintain his Kentucky domicile. When asked in connection with his refund claim whether he was "willing to relinquish the KY registration for a refund," he responded as follows in an e-mail dated ██████████, 2013:

3. No, I am not willing to register the vehicle outside of Kentucky. Vehicle registration is one of the indicia that supports continued domicile in Kentucky. As an active duty member of the armed forces, I maintain my ties to Kentucky in support of my continued domicile there. Loss of vehicle registrations, driver license, voting and other indicia will erode my domicile and call into question my continued ties to Kentucky.

Accordingly, ██████████ is a resident of Kentucky for purposes of motor vehicle registration. See KRS 186.010(12). Under KRS 186.020(1), "[i]f the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides."

KRS 138.460(2) directs that the MVUT is to be collected as follows:

The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be titled or registered:

- (a) When the fee for titling or registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or
- (b) Upon the transfer of title or registration of a motor vehicle previously titled or registered in this state.

As the foregoing statutory provision unambiguously states, the MVUT was due and required to be collected when the vehicle was offered for titling or registration in this state. As we have seen above, [REDACTED], as a resident of the Commonwealth, was required to register his vehicle in Kentucky. KRS 186.020(1); 186.010(12).

The question then becomes whether any exemption applies to relieve [REDACTED] of his liability for the MVUT. Exemptions from taxation will not be presumed or implied and are disfavored and will be strictly construed. LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004); Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 n. 5 (Ky. 2004). [REDACTED] appears to rely upon the provision of KRS 138.460(3) that states that the county clerk shall not collect the tax if "the owner provides...a signed affidavit of nonhighway use, on a form provided by the department, attesting that the vehicle will not be used on the highways of the Commonwealth." The form in question (72A007) requires the owner to swear or affirm that the vehicle "will never be used upon Kentucky's public highways."

As noted above, [REDACTED] indeed tendered a completed affidavit of nonhighway use form with his registration. He claims that he is entitled to use it to avoid liability for the MVUT because he has not been using the vehicle in question in Kentucky because as an active duty naval officer he is and has been stationed outside Kentucky pursuant due to military orders.

However, the "nonhighway use" referred to KRS 138.460(3) means use on private property or off the public highways, such as on a farm or at a construction or mining site. It does not include the kind of situation [REDACTED] describes. His 2004 Mercedes Benz E500 is the kind of vehicle that would be used on the public highways.

His situation is instead addressed by KRS 186A.070(1), which states:

Except as otherwise provided, the state resident owner of a vehicle as defined in KRS 186.010(8)(a), manufactured home as defined in KRS 186.650, or trailer which will not be operated upon the highways of this state shall within fifteen (15) days apply for and obtain a certificate of title in his name. He shall not, however, be required to obtain a certificate of registration until the vehicle, manufactured home, or trailer is to be operated upon the highways of this state.

Under this statutory provision, [REDACTED] is not required to obtain a certificate of registration until the vehicle is to be operated upon the highways of this state. This does not mean that he, a Kentucky resident, must wait until that time to register his vehicle and he did not do so here. Instead, he went ahead and registered his vehicle in [REDACTED] County and under the plain

language of KRS 138.460(2), was required to pay the MVUT at that time. On this point, KRS 138.460(5) further provides:

A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner of this agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS chapter 139, if applicable, in addition to any title, registration, or license fees.

sent an email to the Department on , 2013, stating that he intended to continue his argument with the Department, but has remained non-responsive after continued contacts from the Department in letters dated , 2013, , 2013, , 2013, and , 2013.

For the reasons stated above, the MVUT was properly paid by and his MVUT refund claim was therefore correctly denied.

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.

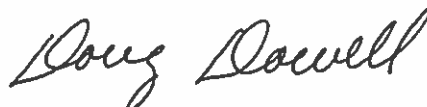
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

