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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted]

Contact: [redacted]

FINAL RULING NO. 2014-26
July 23, 2014

Motor Vehicle Usage Tax Assessment

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued a motor vehicle usage tax ("MVUT") assessment for the year 2007 to [redacted]. The assessment relates to a 2001 Lexus and has been protested by [redacted]

The following schedule provides a breakdown of this assessment, including penalties and applicable interest that has been accrued to the date of this instrument and will continue to accrue until the assessment is paid:

Type Tax	Period	Tax Due	Interest as of 07/23/2014	Penalty	Total Due
MVUT	5/27/07	$[redacted]	$[redacted]	$[redacted]	$[redacted]

The assessment in question resulted from a report or tip to the Department's Freeroader Program. [redacted] asserts that he has been a resident of [redacted], [redacted] for several years and licensed or registered his motor vehicle in [redacted]. He acknowledges that he has filed Kentucky resident income tax returns with his wife during the year the assessment relates to but now claims that this was his tax preparer's error and has since submitted amended returns for those years that claim non-resident status.

[redacted] owns real property in Kentucky, a residence at [redacted], Kentucky. His son lives at this residence, but [redacted] and his wife acknowledge staying there frequently. [redacted] also practiced medicine in Kentucky during the year in question and has used the [redacted], Kentucky residence as a mailing address.

The Department's records also indicate that [redacted] was registered to vote in the Commonwealth of Kentucky and did in fact vote in Kentucky elections during the year for which MVUT was assessed. In doing so, he in effect represented and admitted that he was a Kentucky resident or domiciled in Kentucky during that year. See Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58, 62-63, 66 (1946); Wheeler v. Burgess, 263 Ky. 693, 93 S.W.2d 351, 354-55 (1936). See also KRS 116.025; 116.035; 116.045.

"Residence" for purposes of Kentucky motor vehicle registration is defined in KRS 186.010(12) as follows:

> "Resident" means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement. The possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima-faire evidence that the operator is a resident of Kentucky.

See also KRS 186.020(1). While [redacted] did not hold a Kentucky driver's license, the other facts and circumstances referred to above establish that he had a Kentucky residence or domicile during the year in question. He voted in Kentucky, owned a residence in Kentucky at which he acknowledges staying during the year in question, he practiced medicine in Kentucky, and he filed Kentucky resident income tax returns. It further appears that [redacted] acknowledges that he resided in Kentucky or had a domicile in Kentucky from 1951 until 2006. That Kentucky domicile is presumed to continue until [redacted] establishes that he acquired a new domicile elsewhere. See, e.g., Wheeler v. Burgess, 93 S.W.2d at 354. The facts just recounted belie his acquisition of a new domicile elsewhere.

As a Kentucky resident, he was required to register his 2001 Lexus in Kentucky in 2007. See KRS 138.460(1) and (2); 186.010(12); 186.020(1); 186A.065. Had he properly registered this vehicle during the year in question, the MVUT would have been properly collected by the county clerk. See also KRS 134.800 to 134.820; 132; 132.485; 132.487.

A penalty has been assessed pursuant to KRS 131.180(2) because [redacted] did not pay the MVUT in a timely manner. [redacted] has not offered anything that would show or suggest that these penalties were erroneously assessed or that [redacted] should be relieved of liability from these penalties.

The MVUT assessment is presumed to be valid and correct, with the burden resting upon [redacted] to prove otherwise. See, e.g. Revenue Cabinet v. Gillig, 957 S.W.2d 206, 209-210 (Ky. 1997); Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955). [redacted] has failed to do so.

Therefore, the outstanding MVUT assessment in the amount of $[redacted] (plus applicable interest and penalties) is a legitimate liability 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 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 appeal before the Board is governed by the following rules set forth on 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 these 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 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 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

Doug Dowell

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [redacted], Attorney
[redacted]