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Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact: [REDACTED]

FINAL RULING NO. 2015-37
September 9, 2015

**Motor Vehicle Usage and Ad Valorem
Tax Assessments**

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued to [REDACTED] a motor vehicle usage tax ("MVUT") assessment for the year 2010, and motor vehicle property or ad valorem tax ("MOTAX") assessments for the tax years 2011 and 2012. The assessments relate to a 2002 Holiday Ramble Endeavor recreational vehicle ("the vehicle") and have been protested by [REDACTED].

The following schedule provides a breakdown of these assessments, including penalties and applicable interest that has accrued to September 9, 2015 and will continue to accrue until the assessments are paid:

Type Tax	Period	Tax Due	Interest as of 9/9/15	Penalty	Total Due
MVUT	7/28/2010	\$ [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					
		\$	\$	\$	\$

A conference was held on [REDACTED], 2013 in which the taxpayer's representative discussed the net tax amount assessed against the taxpayer. The taxpayer was assessed at the book value of the vehicle which was \$[REDACTED]. The taxpayer's representative submitted information showing that the taxpayer had placed the vehicle on consignment on [REDACTED], 2011. Based on this information, the net tax amount was adjusted to be assessed at the trade in value of the vehicle which was \$[REDACTED].

[REDACTED] claims that the vehicle, which was purchased in [REDACTED], was owned by a [REDACTED] LLC formed in 2007, and was therefore properly registered in [REDACTED]. The Department disagrees.

KRS 186.020(1) states in part:

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 of registration within fifteen days.

KRS 138.460(1) states in part:

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.

[REDACTED] moved to Kentucky in [REDACTED] 2010. Under KRS 186.020(1), [REDACTED] was required to register the vehicle within fifteen (15) days of bringing the vehicle into the Commonwealth and to pay the tax imposed under KRS 138.460(1). [REDACTED] has failed to do so.

Based upon the information provided or available, the LLC had no purpose other than to evade taxation and thus, its creation or existence should be disregarded as illusory or a sham. See, e.g., Gregory v. Helvering, 293 U. S. 465 (1935); Higgins v. Smith, 308 U.S. 473 (1940). Even assuming arguendo that the LLC was the owner of the vehicle in question, then the doctrine of “piercing the veil” would apply. See White v. Winchester Land Dev. Corp., 584 S.W.2d 56 (1979), overruled on other grounds, Inter-Tel Technologies Inc. v. Linn Station Properties, LLC, 360 S.W.3d 152, 165 (ky. 2012). In either case, [REDACTED] is the real and true owner of the vehicle.

The Department’s records indicate that [REDACTED] was a Kentucky resident during the tax years at issue. [REDACTED] held a Kentucky driver’s license and was registered to vote in Kentucky during the years at issue. Moreover, [REDACTED] filed individual income tax returns in Kentucky during those years.

A residence for Kentucky motor vehicle registration purposes 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-facie evidence that the operator is a resident of Kentucky.

The MVUT is to be “paid on the use in this state of every motor vehicle” and is due when that vehicle is first offered for titling or registration in this state or upon the transfer of title or registration of any motor vehicle previously titled or registered in this state. KRS 138.460(1) and (2). As [REDACTED] was a resident of the Commonwealth, [REDACTED] was required to register the vehicle he owned in Kentucky. See, KRS 186.020(1); 186.010(12); 186A.065. [REDACTED] is therefore liable for the MVUT due to his failure to register the vehicle in Kentucky as required by law and to pay the MVUT that would have been due upon registration.

As noted above, MOTAX assessments have also been issued to [REDACTED] for 2011 and 2012. Based upon the foregoing, the vehicle had a taxable situs in Kentucky during these years, as [REDACTED] was domiciled in Kentucky as of the relevant January 1, 2011 assessment date and the vehicle has not acquired a permanent location in another state. See KRS 132.190(1) and (3); 132.220(1); Ky. Const. §§ 3, 170, 172 and 174; Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789 (1918); OAG 85-108; OAG 81-59. [REDACTED]’s failure to list or apply for a

certificate of registration or title for the vehicle rendered it omitted property and thus subject to ad valorem tax assessment as such by the Department. See KRS 132.290; 132.310; 132.320.

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 vehicle 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.

The assessments referred to above are 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, 209-10 (Ky. 1997); Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955).

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. Any 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,

DEPARTMENT OF REVENUE



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [REDACTED], Esq., PLLC
[REDACTED] Attorney