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WILLIAM M. LANDRUM III
Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]
Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2016-36
September 28, 2016

Unmined Coal Ad Valorem Tax Assessment
For January 1, 2015

FINAL RULING

The Kentucky Department of Revenue ("DOR") currently has an outstanding unmined coal ad valorem tax assessment issued to [REDACTED] ("the Taxpayer") totaling \$ [REDACTED] for the 2015 tax year. The Taxpayer was issued the notice of assessment based on its status as the lessee of the property. The Taxpayer has protested the value of the total parcel; however, there is no tax consequence to the Taxpayer, because the tax on the total tract is assessed to the owner(s) by the DOR. The Taxpayer is not the owner and therefore will not be billed the tax by the DOR. Below is the assessment in question, which is made by the DOR pursuant to KRS 132.820:

| County | Account Number | Parcel Number | Lease Name | DOR Value of Total Tract | DOR Value of Taxpayer's Share |
|------------|----------------|---------------|------------|--------------------------|-------------------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | \$ [REDACTED] | \$ - |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | \$ [REDACTED] | \$ - |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | \$ [REDACTED] | \$ - |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | \$ [REDACTED] | \$ - |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | \$ [REDACTED] | \$ - |

| | | | | | | | |
|--|--|--|-------|--|----|--|------|
| | | | | | \$ | | \$ - |
| | | | | | \$ | | \$ - |
| | | | Total | | \$ | | \$ - |

At issue is whether the DOR correctly assessed the fair cash value of the idle coal property in question. It is the Taxpayer's position that due to the decrease in the market sales and value of coal in 2015 and prior years, the DOR's assessment exceeds the property's fair cash value. The Taxpayer states that the Department's idle factors are incorrect, and thus are overvaluing his unmined coal property. Specifically, the Taxpayer believes that the time factor used to calculate the discount factor used in the value calculation for unmined coal is incorrect. Also, the Taxpayer believes that the capitalization rate used by the Department is incorrect.

It is the DOR's position that the Taxpayer has not submitted persuasive evidence that would establish or indicate that the assessments referred to above do not represent the fair cash value of the unmined coal reserves in question as of the January 1, 2015 assessment date. The Taxpayer submitted documentation to substantiate his arguments regarding his theory of how to recalculate the idle factor and the time portion of said factor. However, the Department does not agree with the methods he set forth, nor does it find this documentation to be persuasive.

Unmined coal reserves are assessed by the DOR pursuant to KRS 132.820(1), which states, in part:

The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances...

Ky. Const. § 172 states in part:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale...

The DOR maintains that its tax calculation takes the current market and economy into account. The DOR uses a three year average of actual sales price from severance tax returns, and the median of royalties from the preceding five years reported on unmined coal tax returns. This calculation system is designed to prevent the fair cash value of the unmined coal reserves as of the applicable assessment date from being unduly influenced by price spikes and drops from year to year. As the prices drop, so too do the factors used by the DOR. Because the assessment date is January 1, 2015, the market swing downward during 2015 tax year (i.e., after the assessment date) will not be reflected for that year. However, any market decrease in 2015

will be reflected in the January 1, 2016 assessment, even if the market price for coal were to increase substantially during the year 2016 (i.e., after the assessment date for that year, or January 1, 2016).

Based on the information available to the DOR, the reserves that have been assessed consist of mineable and merchantable coal reserves that are subject to ad valorem taxation and have been properly assessed at fair cash value. There has been no persuasive documentation or information provided by the Taxpayer that establishes the Taxpayer's claim that the reserves in question will never be mined because the market for coal will never recover from its current decline.

DOR's position is that the disputed unmined coal property is mineable and merchantable and has been properly valued at the fair cash value as required by law and that its factors are correct. See KRS 132.820(1); Kentucky Constitution Section 172. The assessment in question is presumed to be valid and it is the taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). DOR's assessments are presumed to be correct. The Taxpayer has not met this burden in the case of the assessment in question. DOR recognizes that under current market conditions, the coal in this property is unlikely to be mined in the immediate future. However, this property has mineable coal that may be severed at some future date; thus, the property has been assessed in the category of idle coal, which is the lowest possible valuation method for this tax type.

Therefore, the unmined coal ad valorem tax assessments are correct.

This letter is the final ruling of the Kentucky Department of Revenue.

APPEAL

For purposes of this final ruling, the terminology "Kentucky Board of Tax Appeals" and "Board" represent both the current Kentucky Board of Tax Appeals, as well as, the Kentucky Claims Commission that was established by Executive Order on August 8, 2016 and is expected to replace the current Kentucky Board of Tax Appeals on October 1, 2016.

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,

DEPARTMENT OF REVENUE



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED