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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc.
Protest of Motor Vehicle
Property Tax on 2006 Ford Expedition

Contact: [REDACTED], Inc.
Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2008-65
September 22, 2008

FINAL RULING

The Department of Revenue currently has an outstanding liability and applicable interest due on an assessment for motor vehicle ad valorem or property taxes in the amount of \$ [REDACTED] for a [REDACTED] owned by [REDACTED], Inc. A breakdown of the outstanding amount of the assessment, including applicable interest, is shown in the chart below:

Tax Year	Tax Due	Interest As of 9-22-2008	Penalty As of 9-22-2008	Total Due As of 9-22-2008
January 1, 2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Department of Revenue had discovered that the property taxes for the motor vehicle in question had not been assessed or paid for 2006 and accordingly assessed the vehicle as omitted property, as provided by law. See KRS 132.290 et seq. The penalty of twenty percent (20%) as required by KRS 132.290 and the interest as required by KRS 131.183 was imposed as part of the assessment. The penalty has been waived for reasonable cause in accordance with KRS 131.175 and 103 KAR 1:040. The tax and accruing interest remains unpaid. For the reasons that follow, [REDACTED], Inc. was properly assessed property tax for this vehicle and the interest that has accrued on this tax liability.

Liability for ad valorem taxes on a motor vehicle is fixed by KRS 134.810(4), which states:

When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner pursuant to KRS 186.010(7)(a) and (c) on January 1 of any year shall be liable for the taxes on the motor vehicle...

Under KRS 186.010(7)(a), the owner of a motor vehicle is defined as “a person who holds legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.”

The assessment in question is presumed to be valid and it is ██████████, Inc.’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). It is undisputed that ██████████, Inc. purchased the motor vehicle in question on December 13, 2005. No evidence has been presented by either owner that would establish that they did not have physical possession of the vehicle pursuant to a bona fide sale as of the January 1, 2006 assessment date.

The only issue that appears to be raised by the ██████████, Inc. is the assertion that the penalty and interest should be waived due to the amount of time lapsed between the purchase date of ██████████, 2005 and the tax assessment date of ██████████, 2008, the date on which the tax assessment in question was issued. ██████████, Inc. has requested that any interest on the assessment be waived. The imposition of interest is mandatory under KRS 132.290(4), however, the General Assembly has specified that the interest cannot be waived. KRS 131.175 unambiguously states: “Notwithstanding any other provisions of KRS Chapter 131 and 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have the authority to waive the penalty, but not the interest, where it is shown to the satisfaction of the department that failure to file or pay timely is due to reasonable cause.” As indicated above, the Department has waived the penalty otherwise applicable for reasonable cause. It cannot do so for interest, based on KRS 131.175.

For the reasons stated above, the assessment in question is valid and a legitimate ad valorem tax liability of ██████████, Inc.

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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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



Jason Snyder
Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED