



ERNIE FLETCHER
GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
www.kentucky.gov

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2004-24
June 1, 2004

Individual income tax assessment
for the year 1997

FINAL RULING

The Department of Revenue currently has a tax assessment outstanding against you for calendar year 1997. Tax is in the amount of \$ [REDACTED], plus accrued interest of \$ [REDACTED], for a total assessment of \$ [REDACTED]. You have protested the assessment as provided in KRS 131.110.

The individual income tax assessment resulted from an office audit of your individual income tax return. Taxable income is increased due to the disallowance of \$ [REDACTED] taken in travel expenses on the Kentucky Schedule A.

At issue is whether the travel expenses taken are deductible under Internal Revenue Code Section 162(A), which allows a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. However, Section 262 of the code provides that no deductions are allowed for personal, living, or family expenses. Kentucky follows federal income tax. (See KRS 141.050(1)).

To deduct travel expenses, a taxpayer must first determine the location of his tax home. Generally, the tax home is the taxpayer's regular place of business or post of duty, regardless of where he maintains his family home. This is clarified in Internal Revenue Ruling 93-86 which defines a taxpayer's home and also gives the following guidelines for travel expenses:

A taxpayer's "home" for purposes of Section 162(a)(2) of the Code, is generally considered to be located at (1) the taxpayer's regular or principal (if more than one regular) place of business, or (2) if the taxpayer has no regular or principal place of business then at the taxpayer's regular place of abode in a real or substantial sense. If a taxpayer comes within neither category (1)

nor category (2), the taxpayer is considered to be an itinerant whose “home” is wherever the taxpayer happens to work. Rev. Rul. 73-529, 1973-2 C.B. 37, and Rev. Rul. 60-189.

Travel expense paid or incurred in connection with an indefinite or permanent work assignment are generally non-deductible. Travel expenses paid or incurred in connection with a temporary work assignment away from home are deductible under 162(a)(2) of the Code.

In the tax year 1997 you worked for [REDACTED] Corporation of [REDACTED]. You worked in several different locations of West Virginia, apparently within the same general geographical area. You rented an apartment in Madison, West Virginia for the entire year.

Based on the above information the Department has determined that your 1997 employment with [REDACTED] Corporation was not temporary in nature, but indefinite. Therefore, your tax home should follow your employment. (See Floyd Garlock v. Commissioner of Internal Revenue 34 T.C. 611, 616 (1960)).

Therefore, the individual income tax assessment for 1997 of \$ [REDACTED], plus interest, is a legitimate liability due the Commonwealth of Kentucky.

APPEAL

You may appeal this 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 ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

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



GEORGE D. RENFRO
Assistant Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED