



ERNIE FLETCHER
GOVERNOR

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

ROBBIE RUDOLPH
SECRETARY

Final Ruling
No. should
be 2004-41

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2005-04
April 1, 2005

Individual income tax assessment for
tax year 2001

FINAL RULING

The Kentucky Department of Revenue has issued an individual income tax assessment against you for taxable year 2001 totaling \$ [REDACTED] plus applicable interest and penalties. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as accrued interest as of March 31, 2005.

Tax Year	Tax Due	Interest	Penalties	Total
2001	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Totals	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The assessment resulted from your failure to file your Kentucky Individual Income Tax return, Revenue Form 740, for 2001 and to pay the tax due for the year required by KRS 141.020. The records of the Kentucky Department of Revenue disclose that your Kentucky net income for 2001 is based on information obtained from the Internal Revenue Service under the authority of Section 6301 of the Internal Revenue Code and that your Kentucky income tax liability was estimated pursuant to KRS 131.180(4).

At issue is your position that a full year resident of Kentucky who receives taxable income is not required to file a return or pay tax. In your supporting statement you indicate that 1) you never lived, worked, or received income from any territory or federal enclave, within the

United States, having its origin and jurisdiction from Article I or IV of the Constitution for the United States. 2) You are not an officer, employee, or elected or appointed official of the United States, the District of Columbia, a Territory, a State, a Municipality, or of any agency, instrumentality or political subdivision thereof. 3) You are not subject to the Public Salary Act or the Buck Act. 4) You are not engaged in and earn no income from any sources connected with a trade or business with the U.S. Government or the United States. 5) You are a non-resident alien individual. 6) You are not exercising privileges upon which an excise tax could be imposed. 7) You are not an officer or employee of a corporation or an employer who is under a duty to withhold. 8) You are not a citizen subject to the jurisdiction whom Congress has the authority to impose a graduated income tax.

The requirement to pay taxes is not voluntary and is clearly set forth in section 1 of the Internal Revenue Code, which imposes a tax on the taxable income of individuals, estates, and trusts as determined by the tables set forth in that section. Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns. (See United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) and KRS 141.020).

The Sixteenth Amendment provides that congress shall have the power to lay and collect taxes on income from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since that time, the courts have consistently upheld the constitutionality of the federal income tax.

KRS 141.010(17) defines “resident” as “an individual domiciled within this state...” According to the information in the possession of the Department, you meet this definition and are a resident of the Commonwealth of Kentucky. In addition our information reflects that you received income during the taxable year in question. Therefore, you are a taxpayer as defined in KRS 131.010(4) and KRS 134.010(5).

Since you received “gross income” as that term is defined in KRS 141.010, KRS 141.010(9) provides that “gross income” for non-corporate taxpayers “means ‘gross income’ as defined by Section 61 of the Internal Revenue Code.” Section 61 of the Internal Revenue Code defines “gross income” as “all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar item; (2) Gross income derived from business;... (4) Interest;” and several other items. Decisions of the United States Supreme Court have held that Section 61 of the Internal Revenue Code was intended by Congress to exercise its full measure of taxing power and includes wages and other compensation received for labor. See Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955) and United States v. Gerads, 999 F 2d 1255 (8th Cir. 1993).

KRS 141.020(1)(a) states, in part, as follows:

"An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter..."

KRS 131.110(1) and (3) state in part, as follows:

- (1) The Revenue Cabinet shall mail to the taxpayer a notice of any tax assessed by it. The assessments shall be due and payable if not protested in writing to the cabinet within forty-five (45) days from the date of notice. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made..."
- (3) After considering the taxpayer's protest, including any matters presented at the final conference, the cabinet shall issue a final ruling on any matter which may still be in controversy, which shall be mailed to the taxpayer..."

It is the opinion of the Kentucky Department of Revenue that the assessment of tax is authorized by the provisions of KRS Chapter 141. Moreover, it is the opinion of the Kentucky Department of Revenue that your arguments concerning the inapplicability of the income tax to you are incorrect and have been rejected by numerous courts. See, e.g., United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993) (wages are income under the Internal Revenue Code, payment of income taxes is not voluntary); Ficalora v. Commissioner, 751 F.2d 85 (2nd Cir. 1984) (26 U.S.C. Section 1 clearly imposes a tax for which taxpayers are liable); Porth v. Brodrick, 214 F.2d 925 (10th Cir. 1954) (income tax is not involuntary servitude under the 13th Amendment); United States v. Sloan, 939 F.2d 499 (7th Cir. 1991) (revenue laws impose tax on all income); Cullinane v. Commissioner, 77 T.C.M. (CCH) 1192 (T.C. 1999) (taxpayer liable for income tax regardless of whether taxpayer received a privilege or license on which traditional excise tax could be imposed); Ajello v. Commissioner, 69 T.C.M. (CCH) 1765 (T.C. 1995) (rejecting argument that working for wages is right under United States Constitution and therefore can not be taxed); Solomon v. Commissioner, 66 T.C.M. (CCH) 1201 (rejecting Illinois resident's argument that he was not a citizen of the United States).

After reviewing your protest, and the applicable statutes and case law, it is the position of the Kentucky Department of Revenue that the individual income tax assessment issued against you for taxable year 2001 is a valid liability due the Commonwealth of Kentucky.

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

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



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



