



ERNE 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 2004-44*

In the matter of:

██████████ & ██████████

Contact: ██████████ & ██████████
██

FINAL RULING NO. 2005-04
January 31, 2005

Individual Income Tax Assessments
for the years 1996 through 1997

FINAL RULING

The Kentucky Department of Revenue currently has outstanding individual income tax assessments against you as summarized below.

TAX YEAR	TAX DUE	INTEREST	PENALTIES
1996	\$ ██████████	\$ ██████████	\$ ██████████
1997	\$ ██████████	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████	\$ ██████████

The interest and penalties reflected in the above table are calculated through November 22, 2004; however these amounts will continue to accrue. The penalties are assessed pursuant to KRS 131.180.

The individual income tax assessments resulted from a field office audit of your individual income tax returns. At issue is the increase in taxable income due to the disallowance of travel expense taken on the Kentucky schedule A. Mileage claimed for 1996 and 1997 was adjusted from ██████████ and ██████████ to ██████████ and ██████████ respectively.

You protested the assessments based on 1) the Internal Revenue Service audit of 1988, which you claim allowed the same deduction that the Department of Revenue has disallowed for 1996 and 1997, 2) that you do not live in the metropolitan area where you were working.

Under 103 KAR 15:040 Statute of Limitations; assessments and refunds.

Section (1) Assessments. Additional income tax may be assessed within four (4) years from the due date of the return, the extended due date, or the filing date of a late return...

Therefore, the Department is not bound by an audit performed by the Internal Revenue Service.

Travel expenses 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 on this point. (See KRS 141.050(1), KRS 141.010(11) and KRS 141.020).

IRS Publication 17 states: to determine if you are traveling away from home, you must first determine the location of your tax home. Generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area in which your business or work is located. If you have more than one regular place of business, your tax home is your main place of business. See Revenue Ruling 93-86.

For the years involved you worked as a [REDACTED] and an [REDACTED] official of the union. You kept a travel logbook indicating travel from home to a work site and back home again. You worked for several different employers during the 1996 and 1997 tax years. The majority of your time was spent on jobs located in the metropolitan area of [REDACTED]. Therefore, your tax home was determined to be [REDACTED], [REDACTED] and not [REDACTED], Kentucky. All expenses for transportation to and from job locations in the area of your tax home are nondeductible commuting expenses.

After reviewing your protest, the applicable statutes and case law, it is the position of the Kentucky Department of Revenue that the 1996 through 1997 individual income tax assessments issued against you totaling \$ [REDACTED] plus accrued interest and penalties are valid liabilities due the Commonwealth of Kentucky.

This letter is a final ruling of the 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

