



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. 2005-05
January 31, 2005

Individual Income Tax Assessment
for the year 2001

FINAL RULING

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

TAX YEAR	TAX	INTEREST	PENALTIES	FEES
2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The interest, fees and penalties reflected in the above table are calculated through November 24, 2004; however these amounts will continue to accrue. The fees and penalties are assessed pursuant to KRS 131.440 and KRS 131.180 respectively.

The assessments 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 as 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 state: 1) You do not believe you are a person required to file a Kentucky income tax return and that "personal income tax" is voluntary. 2) You are not taxable under KRS 141.020 because you are not an employee or

officer of Kentucky. 3) You have no “Gross Income” as defined by the Supreme Court. 4) State income tax is actually an “excise tax” not imposed on individuals.

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 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 items; (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, e.g., Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955); United States v. Gerads, 999 F 2d 1255 (8th Cir. 1993).

KRS 141.020(1) 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...

After reviewing your protest, the applicable statutes and case law, it is the position of the Department of Revenue that the 2001 individual income tax assessment issued against you totaling \$ [REDACTED] plus accrued interest, penalties and fees 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



