



ERNIE FLETCHER
GOVERNOR

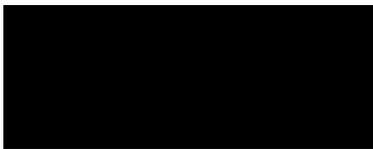
OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
(502) 564-6785 FAX

ROBBIE RUDOLPH
SECRETARY

In the matter of:



Contact:



FINAL RULING NO. 2005-77
November 18, 2005

Individual Income Tax Assessments
for Tax Years 1998, 1999, 2000, & 2001

FINAL RULING

The Kentucky Department of Revenue has issued individual income tax assessments against you for taxable years 1998, 1999, 2000, and 2001 totaling \$17,044.78 plus applicable interest, fees, and penalties. The following table provides a breakdown of the amount of tax due, all assessed fees, and penalties, as well as accrued interest calculated through October 20, 2005, however interest will continue to accrue.

Tax Year	Tax Due	Interest	Fees	Penalties	Total
1998					
1999					
2000					
2001					
Totals	\$	\$	\$	\$	\$

The assessments resulted from your failure to file your Kentucky Individual Income Tax Returns, Revenue Form 740, for 1998, 1999, 2000, and 2001 and to pay the tax due for the years as required by KRS 141.020. The records of the Kentucky Department of Revenue disclose that your Kentucky net income for 1998, 1999, 2000, and 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 are not an officer and/or agency and/or instrumentality of the State of Kentucky; and 2) Commonwealth of Kentucky, Department of Revenue has compelled involuntary servitude in the form of causing you to work a percentage of your productive time for the profit, gain, and enrichment of the state.

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).

Stating that you are not an officer and/or agency and/or instrumentality of the State of Kentucky is a misinterpretation of 26 U.S.C. section 3401, which imposes responsibilities to withhold tax from wages. That section establishes the general rule that wages include all remuneration for services performed by an employee for his employer. Section 3401(c) defines employee and states the term "includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof..." This language does not address how other employee's wages are subject to withholding or taxation. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." In United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) the court stated "It is obvious within the context of the law the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."

The Thirteenth Amendment to the United States Constitution prohibits slavery within the United States, as well as the imposition of involuntary servitude, except as punishment for a crime of which a person shall have been duly convicted. In Porth v. Brodrick, 214 F.2d 925,926 (10th Cir. 1954), the Court of Appeals stated that "if the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment."

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).

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).

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 assessments issued against you for taxable years 1998, 1999, 2000, and 2001 are valid liabilities due the Commonwealth of Kentucky.

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



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

3

