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GOVERNOR

**OFFICE OF THE SECRETARY**  
FINANCE AND ADMINISTRATION CABINET  
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ROBBIE RUDOLPH  
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2005-83  
December 12, 2005

Individual income tax assessments  
for the periods ended  
December 31, 1997

**FINAL RULING**

The Kentucky Department of Revenue (formerly known as the Kentucky Revenue Cabinet) has issued individual income tax assessments against you for the taxable year 1997 totaling \$ [REDACTED] including applicable interest, fees and penalties. The following table provides a breakdown of the amount of tax due as well as accrued interest, fees per KRS 131.440 and penalties per KRS 131.180 calculated through November 2, 2005; however interest will continue to accrue.

Tax Year	Notice Number	Tax Due	Interest	Fees	Penalties	Total
1997	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

At issue are adjustments made to your 1997 individual tax returns by the Department of Revenue that disallowed the deductions for certain employee business expenses for travel, lodging, and meals taken on Schedule A.

Chapter 141 of the Kentucky Revised Statutes pertains to income taxes. The definitions for the chapter are found in KRS 141.010.

KRS 141.010(3) states:

“Internal Revenue Code’ means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1998, that would otherwise terminate, and as modified by KRS 141.0101;”

KRS 141.010(9) and (10) define “gross income” and “adjusted gross income” to mean the following:

KRS 141.010(9) states:

“Gross income’ in the case of taxpayers other than corporations means “gross income” as defined in Section 61 of the Internal Revenue Code;”

KRS 141.010(10) states in part:

“Adjusted gross income’ in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101...”

Internal Revenue Code Section 162 - A deduction is allowed for ordinary and necessary traveling expenses incurred by a taxpayer while away from home in the conduct of a trade or business.

General rule Temporary v. Indefinite Test. In determining when “away from home is” the nature of the stay and the length of time away from the individual’s principal place of business are of prime importance. If the assignment is temporary in nature, the taxpayer is considered “away from and traveling expense deduction is allowed. If the assignment is for an indefinite period of time the location of the assignment becomes the individual may not deduct traveling expenses while there. When an individual works away from home, at a single location, for one year or more, the employment will be treated as indefinite and related travel expenses will not be deductible. Employment expected to last more than one year is classified as indefinite, regardless of whether the work actually exceeds a year. (Rev. Proc. 93-86)”

Internal Revenue Code Section 274 – In order to claim any deductions, a taxpayer must be able to prove that the expenses were in fact paid or incurred. Such expenses are deemed particularly susceptible to abuse, must generally be substantiated by adequate records or sufficient evidence corroborating the taxpayer’s own statement.

Generally, expenses must be substantiated as to (1) amount, (2) time and place, and (3) business purpose. A record of the elements of the expense at or near the time of the expenditure or use supported sufficient documentary evidence that has a high degree of credibility.

Upon review of your 1997 Kentucky individual income tax return, the Department of Revenue requested that you provide additional information regarding the amounts claimed as business mileage taken on the corresponding Schedules A. The Department of Revenue stated that the amount of traveling expenses taken on Schedule A was incomplete because insufficient detailed information was provided such as rent expense receipts and a letter from the taxpayer's employee employer stating the work assignment was temporary instead of permanent. Therefore, assessments were issued for 1997.

The Division of Protest and Review requested additional information in letters dated [REDACTED], 2001, [REDACTED], 2001, [REDACTED], 2003 and [REDACTED], 2005, but no response was received.

After reviewing your protest, and the applicable statutes and regulations, it is the position of the Kentucky Department of Revenue that the individual income tax assessments issued against you for the tax years 1997 of \$ [REDACTED], including accrued interest, fees and penalties are legitimate liabilities due the Commonwealth of Kentucky. This is a 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



