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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. 2005-85
December 12, 2005

Individual income tax assessments for the periods ended
December 31, 1995, December 31, 1996, and 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 years 1995, 1996, and 1997 totaling \$ [REDACTED] plus 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 131.880 calculated through November 1, 2005; however interest will continue to accrue.

Tax Year	Notice Number	Tax Due	Interest	Fees	Penalties	Total
1995	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1996	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1997	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

At issue are adjustments made to your 1995, 1996 and 1997 individual income tax returns by the Kentucky Department of Revenue that disallowed the deductions for personal property taxes and real estate taxes, home mortgage interest and un-reimbursed employee expenses 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, 1993, for tax year end 1995, December 31, 1995, for year end 1996, and December 31, 1997 for tax year end 1997, 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 164 allows a taxpayer to deduct substantiated personal property taxes paid by the individual.

Generally, taxes not directly connected with a trade or business or property held for production of rents or royalties may be deducted only as itemized deduction on Schedule A of the Form 1040. State or local personal property taxes and state, local or foreign real property tax are deductible.

Internal Revenue Code Section 163 allows a taxpayer to deduct home mortgage interest and business related interest to be deducted. However, such interest must pertain to the debt of the taxpayer and must result from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money.

Generally, home mortgage interest is reported by the lender on Federal Form 1098 and the amount reported is generally deductible.

Interest paid or accrued on indebtedness property allocable to a trade or business (other than services as an employee) is deductible.

Personal Interest is not deductible under IRC Section 163.

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.

Generally, deductible travel expenses that are paid or incurred while traveling away from home ordinarily are deductible: travel, meals, lodging and transportation.

Internal Revenue Code Section 67(a) – an individual is allowed itemized deductions, only to the extent that the aggregate of such deductions exceeds two percent of the individual's adjusted gross income for the tax year.

Generally, union dues, initiation fees and out-of-work benefit assessments are deductible as an itemized deduction on Schedule A of the Form 1040, subject to the 2% floor.

Internal Revenue Code Section 162 and 274 allows a taxpayer to deduct substantiated business mileage expenses.

“General rule The standard mileage rate method is a simplified method available to both employees and self-employed persons in computing deductions for car expenses in lieu of calculating the operating and fixed costs allocable to business purposes (Rev. Proc. 99-38).”

Internal Review 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 1995, 1996 and 1997 Kentucky individual income tax returns, the Department of Revenue requested that you provide additional information regarding the amounts claimed as personal property taxes and real estate taxes, home mortgage interest, and un-reimbursed employee expenses on the corresponding Schedules A. The Department of Revenue stated that the amount of the aforementioned deductions taken on Schedule A was incomplete because no detailed information was provided such as dates driven, mileage amounts

and amounts per mile driven. Therefore, assessments were issued for tax years 1995, 1996 and 1997.

In addition, the Division of Protest and Review requested additional information in letters dated [REDACTED], 2004 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 1995, 1996 and 1997 totaling \$ [REDACTED] plus accrued interest and fees per KRS 131.440 and penalties per KRS 131.180 are legitimate 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.

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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET

A handwritten signature in cursive script that reads "Thomas H. Brown".

THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



