



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

JONATHAN MILLER
Secretary

501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

WILLIAM M. COX, SR.
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2008-05
January 23, 2008

Individual income tax assessments
for the tax periods ended December 31, 2001
through December 31, 2003

FINAL RULING

The Kentucky Finance and Administration Cabinet, Department of Revenue (successor to the Kentucky Revenue Cabinet; the "Department") has issued individual income tax assessments against [REDACTED] for the taxable years 2001, 2002 and 2003, totaling \$[REDACTED], plus applicable interest, fees and penalty. The following table provides a breakdown of the amount of tax due and the accrued interest, fees and penalties as of the date of this final ruling.

Tax Period	Tax	Interest	Fees	Penalty	Total
December 31, 2001	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
December 31, 2002	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
December 31, 2003	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
Totals	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

The Kentucky Department of Revenue ("DOR") was contacted by email on [REDACTED], 2006 by [REDACTED], Assistant Commonwealth Attorney for the 46th Judicial Circuit. In that correspondence, [REDACTED] advised the DOR that [REDACTED] was indicted and pled guilty to felony theft by unlawful taking, resulting in income that was not reported to Kentucky. The theft occurred when [REDACTED] stole over \$[REDACTED] from [REDACTED] using a power of attorney [REDACTED] had given him. He gave a written statement to the police admitting what he had done and blaming his actions on a [REDACTED] addiction and depression.

Upon examination of the records, the DOR could not locate Kentucky individual income tax returns filed by ██████████ for tax years ending 12/31/1996 through 12/31/2004, during which time ██████████ was a resident of Kentucky. ██████████ was requested to submit Kentucky individual income tax returns for those years and complied with the request, but did not report the theft income on his original tax returns. Amended returns were filed and penalties were assessed for filing late returns, failure to pay, and fraud based on KRS 131.180, the Uniform Civil Penalty Act. ██████████ has not protested the tax, interest and fees for the years at issue and therefore those amounts are now due and payable. ██████████'s protest solely requests abatement of penalties, including the penalty for fraud.

The fraud penalties were assessed pursuant to KRS 131.180(1), which states:

If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.

KRS 131.010(10) adds the following:

As used in this chapter, unless the context requires otherwise:

(10) "Fraud" means:

(a) Intentional or reckless disregard for the law, administrative regulations, or the department's established policies to evade the filing of any return, report, or the payment of any moneys due to the department pursuant to law or administrative regulation; or

(b) The deliberate false reporting of returns or reports with the intent to gain a monetary advantage.

It has been settled since 1961 that embezzled money or other ill-gotten gains constitute gross income for income tax purposes. James v. United States, 366 U.S. 213 (1961). As a Kentucky resident, ██████████ clearly owed income tax on the amount of money he stole and is not contending otherwise. KRS 141.010(9), (10) and (11); 141.020(1); 141.050(1).

For purposes of Kentucky's penalty law, fraud can consist of reckless as well as intentional disregard of the law. KRS 131.180(1); 131.010(10). A number of facts and circumstances establish the fraud necessary to support the penalty at issue here. ██████████ engaged in a consistent pattern over a period of several years of underreporting and indeed failing to report altogether substantial amounts of income. His failure to file tax returns altogether is itself highly probative of the requisite fraud. ██████████ is certainly presumed to know the law and its requirements. Oppenheimer v. Commonwealth, 305 Ky. 147, 202 S.W.2d

373 (1947). Also probative of fraud is [REDACTED]'s admitted criminal activity consisting of the theft of large sums of money under circumstances amounting to a breach of trust.

In light of these and other facts and circumstances relevant to this matter, the Department's assessment of a fraud penalty was entirely proper and warranted, and all penalties assessed are a legitimate liability of [REDACTED] to the Commonwealth of Kentucky.

This 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.

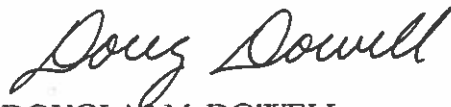
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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



DOUGLAS M. DOWELL
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED