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Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.  
Commissioner

In the matter of:

██████████ & ██████████

Contact: ██████████ & ██████████  
██████████

FINAL RULING NO. 2008-08  
March 6, 2008

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

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 2001 through 2003 totaling \$██████████, 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 131.180 calculated through March 5, 2008; however interest will continue to accrue.

Tax Year	Notice Number	Tax Due	Interest	Fees	Penalties	Total
2001	██████████	██████████	██████████	██████████	██████████	██████████
2002	██████████	██████████	██████████	██████████	██████████	██████████
2003	██████████	██████████	██████████	██████████	██████████	██████████
<b>Total</b>		██████████	██████████	██████████	██████████	██████████

At issue are adjustments made to your Kentucky Individual Income Tax Return for tax years 2001, 2002, and 2003. The adjustments relate to the disallowance of unreimbursed employee business expenses.

Chapter 141 of the Kentucky Revised Statutes pertains to income taxes. Kentucky adopts much of the Internal Revenue Code (I.R.C.) for the purpose of calculating Kentucky income tax. In pertinent part, KRS 141.010(10) defines “adjusted gross income” in the case of individuals as “gross income” as defined in I.R.C. § 61 minus the deductions allowed individuals by I.R.C. § 62. I.R.C. § 62 allows certain trade or business expenses of employees as set forth in I.R.C. § 161 and following.

I.R.C. § 162(a)(2) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business[.]

Generally, if the employee wishes to secure a deduction for expenses in excess of employer reimbursements, he must submit, as part of his federal tax return, a statement showing the following information:

- (1) the total of all amounts received as advances or reimbursements from his employer in connection with the ordinary and necessary business expenses of the employee, including amounts charged directly or indirectly to the employer through credit cards or otherwise; and
- (2) the nature of his occupation, the number of days away from home on business, and the total amount of ordinary and necessary business expenses incurred by him . . . broken down into such broad categories as transportation, meals, and lodging while away from home overnight, entertainment expenses, and other business expenses.

See 26 C.F.R. § 1.162-17(b) and (c); see also, I.R.C. § 274(d).

The records of the Department of Revenue indicate that although you submitted a mileage log and invoices at the request of the auditor, you failed to submit the requested statement from ██████████'s employer stating the annual per diem reimbursement amount ██████████ received during each of the tax years at issue. Numerous requests for this information by both the Owensboro Taxpayer Service Center and the Division of Protest Resolution were unsuccessful.

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 2001, 2002, and 2003 totaling \$██████████ plus accrued interest, cost of collection fees per KRS 131.440 and penalties per KRS 131.180 are legitimate liabilities due the Commonwealth of Kentucky. This is a final ruling of the Kentucky 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



Jason Snyder  
Executive Director  
Office of Legal Services

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED