



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE

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THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO.2008-48  
July 30, 2008

### FINAL RULING

The Kentucky Department of Revenue ("The DOR") has issued an individual income tax assessment against you for the taxable year 1996 totaling \$ [REDACTED] plus applicable interest, fee and penalty. The following table provides a breakdown of the amount of tax due as well as accrued interest, fee per KRS 131.440 and penalty per KRS 131.880 calculated through July 30, 2008. Interest continues to accrue until balance is paid in full.

| Tax Year | Notice Number | Tax Due    | Interest   | Penalties  | Total      |
|----------|---------------|------------|------------|------------|------------|
| 1996     | [REDACTED]    | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

At issue are adjustments made to your 1996 Kentucky Individual Income Tax Return by the Department of Revenue for un-reimbursed employee business mileage expenses taken on the Schedule A.

Upon review of your 1996 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 Schedule A. The Department of Revenue stated that the amount of the mileage deduction taken on Schedule A was unsubstantiated because detailed information was not provided such as dates driven, mileage amounts and amounts per mile driven. Therefore, assessments were issued for 1996.

Kentucky has chosen generally to follow the Internal Revenue code in determining income. (See KRS 141.010 (3)(a) and (10)). As a general rule, a taxpayer can substantiate business expenses for cars by keeping an exact record of the amount paid for gasoline, insurance and other costs. However, the standard mileage rate method is a simplified method available to both business and self employed persons in computing deductions for car expenses and self-employed persons in computing deductions for car expenses in lieu of calculating the operating and fixed costs allocable for business purposes (Rev. Proc. 99-38). However, both those employed by others or self employed may compute deductions for car expenses using a simplified standard mileage rate.

You requested that your case be held in abeyance pending receipt of additional information concerning the aforementioned business mileage deduction on Schedule A. The Division of Protest Resolution requested additional information in a letter dated [REDACTED], 2004 but no response was received. Eventually, additional information was received but it was not sufficient to indicate that the business mileage expenses were legitimate and deductible expenses. The calendar provided did not contain exact addresses, but only initials. Also, the mileage entry for each day was all in the same ink. It appears that the mileage entries were made at the same time, and not done at or near the time of the use.

Further, commuting expenses are nondeductible personal expenses. IRC section 262 generally disallows deductions for personal, living, or family expenses. Section 1.162-2(e) of the Treasury Regulations provides that commuting expenses are not considered business expenses. Section 1.162-1(b)(5) of the regulations provides that commuting expenses are considered personal expenses.

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 assessment issued against you for the 1996 tax year in the amount of \$[REDACTED] plus accrued interest in accordance with KRS 131.183(1) and penalty per KRS 131.180(2) is a legitimate liability 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.

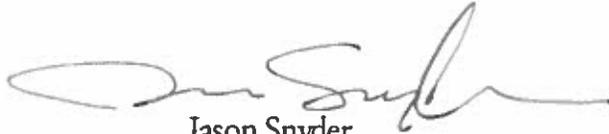
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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



Jason Snyder  
Executive Director  
Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED