



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ & ██████████

Contact: ██████████

FINAL RULING NO. 2008-89
January 16, 2009

Disallowance of the Historic Preservation
Restoration Credit for 2006

FINAL RULING

The Kentucky Department of Revenue (the "Department") has issued you an individual income tax assessment against you for the taxable years ending December 31, 2006 totaling \$██████████ plus applicable interest and penalty. Interest is determined in accordance with KRS 131.183 and penalties in accordance with KRS 131.180. The following table provides a breakdown of the amount of tax, accrued interest, and penalty due through December 12, 2008. Interest will continue to accrue daily on the unpaid balance.

Period	Tax	Interest	Penalty	Total
2006	\$██████████	\$██████████	\$██████████	\$██████████

At issue is a \$5000 Historic Preservation Restoration Credit taken on your 2006 individual income tax return. The Historic Preservation Restoration Credit taken on an individual's return must comply with all requirements of KRS 171.397. See KRS 141.0205 (providing a credit against income tax for "[t]he certified rehabilitation credit permitted by KRS 171.397"). KRS 171.397(2)(a) provides:

A taxpayer seeking the credit provided under subsection (1) of this section shall file an application for a preliminary determination of maximum credit eligibility before April 30 of the year in which the proposed project will begin. The application shall describe the project and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the projected qualified rehabilitation expenses, and any other information the council may require. The council shall determine the preliminary maximum credit available for each taxpayer and shall notify the taxpayer of that amount by May 31 of the year in which the application was filed. If total credits applied for in any year exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of this subsection, the provisions of subsection (5) of this section shall be applied to reduce the approved credits for all taxpayers with qualifying applications for that year.

It is your position that you “met & followed guidelines of Line 3/page 16” of the instructions for the Kentucky income tax return (Form 740). You further stated that the instructions did not mention that you needed prior approval from another state agency such as the Kentucky Heritage Council. You further stated that when you reviewed the Kentucky Heritage Council website, you did not find any requirement for prior approval. It is therefore your contention that because the approval process was not made clear, you should be given some sort of relief.

The Department contacted the Kentucky Heritage Council to inquire if you received prior approval on your project. The Kentucky Heritage Council replied that you had not received prior approval. The Kentucky tax form instructions, the law and the Kentucky Heritage Council Website (<http://www.heritage.ky.gov/incentives/>) all make it very clear that the amount of the credit must have been applied for and approved or certified in advance by the Kentucky Heritage Council.

Since no further information has been forwarded to the Department for consideration and it is clear the approval process was unambiguous and not followed by you, the individual income tax assessment for the 2006 tax year referred to above in the amount of \$[REDACTED], plus applicable interest and penalties, is a legitimate liability due the Commonwealth of Kentucky.

Because you did not remit in full the amount of tax determined to be due under the provisions of KRS 141.020 for the 2006 tax year, a late payment penalty was applied in accordance with KRS 131.180(2).

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
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED