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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

██████████ & ██████████

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

FINAL RULING NO. 2010-19
March 26, 2010

Assessment of Income Tax on Unreported Earnings
Tax Year 2005

FINAL RULING

The Kentucky Department of Revenue has issued individual income tax assessments against ██████████ and ██████████ for the taxable year 2005. The following table provides a breakdown of the amount of tax due, penalty, as well as accrued interest as of the date of this final ruling.

TAX YEARS	TAX	INTEREST AS OF 3/26/2010	PENALTY	TOTAL
2005	██████████	██████████	██████████	\$ ██████████
TOTALS	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

The assessments resulted from the Kentucky Individual Income Tax return, Revenue Form 740 initially filed by ██████████ and ██████████ for tax year 2005. However, the taxpayer failed to indicate any pension income on the aforementioned return. The records of the Kentucky Department of Revenue disclose that ██████████ & ██████████ net income for 2005 is based on information obtained from the Internal Revenue Service under the authority of Section 6301 of the Internal Revenue Code, KRS 141.010 and KRS 141.020.

At issue is whether the information obtained from the Internal Revenue Service for the 2005 tax year meets the definition of income and whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on such income. The information obtained was pension income not reported on the Kentucky Individual Income Tax return, which allowed the Department of Revenue to issue an assessment for 2005. Furthermore, an adjustment was allowed for the deduction of the maximum amount of pension deduction of \$██████████.

For Kentucky income tax purposes, “gross income” in the case of taxpayers other than corporations means “gross income” as defined in Section 61 of the Internal Revenue Code (26 U.S.C. § 61). See KRS 141.010(9). 26 U.S.C. § 61(a) “gross income” means all income from whatever source derived and includes compensation for services. Furthermore, 26 C.F.R. § 1.1-1(b) provides “[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.”

KRS 141.010(10) states, “for taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employees saving plans. , the pension plan exclusion is allowed to arrive at Kentucky net income then, any additional individual income tax may be assessed.

██████████ and ██████████ are Kentucky residents and they have not offered any evidence that would suggest that they are not residents. KRS 141.020(1) states, “an annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income.” “Net income” is gross income with certain adjustments and minus allowable deductions according to KRS 141.010(10) and (11). Please note that while Kentucky adopts certain federal definitions, its power to tax its residents is found in its own constitutional and statutory authority.

Based upon the available information, and the applicable statutes, the outstanding individual income tax assessments issued against ██████████, and ██████████ for the 2005 tax years is a valid 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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED