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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2010-39
June 11, 2010

Assessment of Income Tax on Earned Income
Tax Year 2008

FINAL RULING

The Kentucky Department of Revenue has issued individual income tax assessment against [REDACTED] for the taxable year 2008. The additional assessed amount was \$ [REDACTED] tax and \$ [REDACTED] interest. [REDACTED] remitted the payment of the additional assessed tax and interest and then requested a full refund of the \$ [REDACTED] tax withheld plus the additional \$ [REDACTED] that was assessed to and paid by [REDACTED]. The following table provides a breakdown of the amount of the refund request or claim:

TAX YEAR	TAX WITHHELD	PAID ASSESSED TAX	PAID INTEREST	PENALTIES	TOTAL
2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

As originally filed, [REDACTED]'s 2008 Kentucky Individual Income Tax return showed a \$ [REDACTED] liability, payment of which was not remitted with the return as required by KRS 141.020. When the Department assessed the amount, [REDACTED] discovered all knowledge of the return, which was based on an attached W-2, claiming her identity had been stolen. She then paid the additional assessment under protest and filed an amended 2008 return requesting refund of the full \$ [REDACTED].

In amending the return, [REDACTED] changed all the income and deductions to zeroes but attached with the same W-2 as her originally filed return showing \$ [REDACTED] in wages from [REDACTED], Inc. [REDACTED] stated that she had zero income for income tax purposes for the year 2008.

At issue is whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on the earned income from the W-2 issued by the employer.

KRS 141.020(1) states that “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. See 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.

KRS 141.010(17) defines a “resident” as including an individual domiciled within this state. In her letter to Commissioner Miller, dated [REDACTED], 2010, the taxpayer stated that she was “domiciled in the Commonwealth of Kentucky, where [she has] maintained such status for approximately a year, 4 months.” Therefore, [REDACTED] is subject to Kentucky income tax.

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). Under 26 U.S.C. §61(a), “gross income” means all income from whatever source derived and includes compensation for services. Further, 26 C.F.R. §1.1-1(b) provides that “[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.”

Based upon the available information, and the applicable statutes, the \$ [REDACTED] individual income tax assessment issued against [REDACTED] for the 2008 tax year was a valid assessment and the \$ [REDACTED] withholding tax was properly withheld. Although [REDACTED] was offered a conference to discuss this matter per KRS 131.110, she stated in her [REDACTED], 2010 letter, “Please be advised that I do not want an informal hearing in your office.” Thus, this final ruling was issued and [REDACTED]’s refund was therefore properly denied.

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.

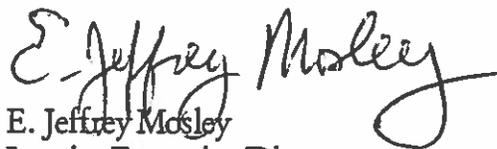
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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