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Governor

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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

Final Ruling No. 2010-57  
September 10, 2010

Assessment of Income Tax on Unreported Earnings  
Tax Year 2005

FINAL RULING

The Kentucky Department of Revenue has denied [REDACTED]'s protest of the assessment of income tax on unreported earnings for tax year 2005. Failure to file a return and remit the tax due resulted in the issuance of the failure to file/did not file and the paid late/did not pay penalties pursuant to KRS 131.180(4) and KRS 131.180(2) respectively. The assessment totals \$ [REDACTED], plus applicable interest and penalties computed to [REDACTED], 2010. The table below provides a breakdown of the amount of tax, accrued interest and penalties. Interest will continue to accrue until all tax due is paid in full.

Period	Tax	Interest	Penalty	Total
2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The assessment is a result of [REDACTED]'s failure to file a Kentucky Individual Income Tax Return for the 2005 tax year and pay the tax due as required by KRS 141.020. The Department of Revenue issued an assessment of Kentucky individual income tax against [REDACTED] for the 2005 tax year is based on information obtained from the Internal Revenue Service under the authority of Section 6301 of the Internal Revenue Code. [REDACTED]'s Kentucky income tax liability was estimated pursuant to KRS 131.180(4).

At issue is whether the information obtained from the Internal Revenue Service (“IRS”) for the 2005 tax year is evidence of taxable income, and also whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on such income.

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 an individual domiciled within this state. The taxpayer and the IRS provided the Department of Revenue with information indicating the taxpayer was a resident of Kentucky during the audit period.

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. See KRS 141.010(9). For federal income tax purposes, “gross income” means all income from whatever source derived and includes compensation for services. See I.R.C. Sec. 61. Further, Treasury Regulation Sec. 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.”

After reviewing the available information, the applicable statutes and case law, the position of the Kentucky Department of Revenue is that the outstanding individual income tax assessments issued against [REDACTED] for the 2005 tax year 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