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Commissioner

In the matter of:

██████████ & ██████████

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

FINAL RULING NO. 2010-62
October 1, 2010

Assessment of Income Tax
Tax Year 2009

FINAL RULING

The Kentucky Department of Revenue ("DOR") denied the new home tax credit claimed by ██████████ & ██████████ on their individual 2009 tax return, and denied the requested \$ ██████████ refund. As a result of the tax credit denial the DOR issued an individual income tax assessment against ██████████ & ██████████ for the taxable year 2009. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as accrued interest as of the date of this final ruling.

TAX YEARS	TAX	INTEREST AS OF 10/01/2010	FEES	PENALTIES	TOTAL
2009	██████████	██████████	██████████	██████████	██████████

The DOR has denied the application for a new home tax credit submitted by ██████████ & ██████████ pursuant to KRS 141.388. The application was faxed to the DOR on ██████████, 2010, listing the date of purchase of the new home in question as ██████████, 2009. The sole basis of the DOR's denial of the credit is that this application was not submitted to the DOR in a timely manner.

The statute creating the new home tax credit unambiguously states:

Within seven (7) calendar days after the purchase of a qualified principal residence, the qualified buyer shall submit via fax a completed application for the new home tax credit on forms provided by the department.

Furthermore, KRS 141.388(4) provides:

The application for the new home tax credit shall be void if:

* * * * *

(b) The application is not received within seven (7) calendar days from the purchase; or

* * * * *

Under the facts and applicable law stated above, the application at issue was not received by the DOR within seven days of the purchase of the new home and is therefore void. ██████████ & ██████████ argue that this requirement should be overlooked or excused because they were not made aware of this requirement. The law is clear, however, that “[e]very person is conclusively presumed to know the law.” Oppenheimer v. Commonwealth, 305 Ky. 147, 202 S.W.2d 373, 375 (1947). Our state’s highest court long ago observed that

[t]here is a maxim as old as the law itself, *ignorantia legis neminem excusat*, ‘ignorance of the law excuses no one’, 42 C.J.S. page 380. This is a rule of necessity, otherwise ignorance of the law would furnish immunity from punishment for violations of the Criminal Code and immunity from liability for violations of personal and property rights. Topolewski v. Plankington, 143 Wis. 52, 73, 126 N.W. 554, 561. In Logsdon v. Haney, 74 S.W. 1073, 25 Ky. Law Rep. 245, it was written that this maxim has been applied with the same rigor in this jurisdiction as elsewhere, and that one’s non-action through ignorance of the law could not be allowed to extend or enlarge his legal rights.

Freeman v. Louisville & Jefferson Planning & Zoning Comm’n, 380 Ky. 360, 214 S.W.2d 582, 583 (1948). In this case, the plaintiff argued that it was not aware of an amendment to a law shortening its time to file an appeal. The court rejected that argument, holding that

like all changes made in the law by the Legislature, it was necessary for the litigants to keep themselves informed thereof—ignorance on the part of a litigant of a change the Legislature has made in the law will not excuse him from its effect nor allow him to extend or enlarge his legal rights.

Id. at 584. By the same token, ignorance of the deadline for submission of the application of the new home tax credit cannot permit the DOR to overlook non-compliance with that deadline.

Finally, it should be noted that the Commonwealth of Kentucky and the DOR in particular did provide ample information to the public that would have enabled any interested person to find out about the new home tax credit and its requirements, including the one at issue here. The Governor issued a press release on July 8, 2009 that specifically stated that “[t]o qualify, the buyer must submit a credit application within seven days of closing on the property” and provided directions on how to obtain further information from the DOR. This further information included the application and details concerning the credit’s requirements prominently featured on the DOR’s website in its Hot Topics Section. The DOR also described the new home tax credit and its requirements at length in the October, 2009 edition of its publication Kentucky Tax Alert. Finally, the application itself (Form 40A103) specifically states that

You Cannot Claim the Credit If

- Your application is not received via fax within seven calendar days from the purchase date.

Thus, there were ample means by which a taxpayer who was applying or considering applying for this credit could or should have learned of the requirement that the application had to be faxed to the DOR within seven days of purchase.

For the reasons stated above, the new home tax credit was properly denied in this case.

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;

██████████ & ██████████

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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