



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40601
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

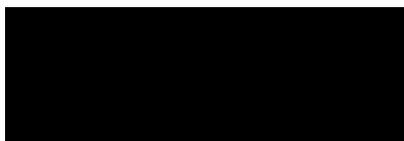
JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:



Contact:



FINAL RULING NO. 2010-70
October 21, 2010

Denial of 2010 New Home Tax Credit Application

FINAL RULING

The Department of Revenue ("the DOR") has denied the application for a new home tax credit submitted by [REDACTED] pursuant to KRS 141.388. The application was received to the DOR on [REDACTED], 2010, listing the date of purchase of the new home in question as [REDACTED], 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, except that any qualified buyer who purchased a qualified principal residence after November 6, 2009, but before June 4, 2010, shall have thirty (30) calendar days from June 4, 2010, to submit via fax a completed application.

KRS 141.388(2)(c). Furthermore, KRS 141.388(4) provides:

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

* * * * *

- (c) The application is not received within thirty (30) calendar days from June 4, 2010, for purchases of a qualified principal residence after November 6, 2009, but before June 4, 2010; or

* * * * *

█ does not dispute that her application failed to meet the deadline specified above in KRS 141.388(2)(c) and (4)(c). She states that she “had submitted [her] completed application in person to my realtor on the afternoon of █, 2010, well before the [deadline]” and contends that she should not “be penalized for the delay if my realtor was ultimately at fault.”

Unfortunately, the law plainly and unambiguously imposes the duty upon the “qualified buyer,” which in this case is █, “to submit via fax [the] completed application” by the statutory deadline. KRS 141.388(1)(d) and (2)(c). Her entrustment of this task to her realtor does not relieve her of her legal duty under KRS 141.388(2)(c) and the consequence specified in KRS 141.388(4)(c) for failure to perform this duty, namely that the application is rendered void.

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;
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 & Administration Cabinet



E. Jeffrey Mosley

Interim Executive Director

Office of Legal Services for Revenue