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Commissioner

In the matter of:

██████████ AND ██████████  
Contact: ██████████

FINAL RULING NO. 2010-85  
December 3, 2010

Denial of Refund Claim  
Tax Year 2008

**FINAL RULING**

Kentucky Department of Revenue ("Department") has disallowed an individual income tax refund claimed by ██████████ and ██████████ ("Taxpayers") on their 2008 return. The table below provides a breakdown of the refund claimed by the Taxpayers.

TAX YEAR	TAX REFUND DENIED	INTEREST	TOTAL
2008	\$ ██████████	\$ ██████████	\$ ██████████

The refund claim concerns income of the Taxpayer ██████████. The 2008 Kentucky return reported that he and his wife, ██████████, became residents of Kentucky in ██████████, 2008 and before that were residents of ██████████ for the earlier part of the year. ██████████ worked for the same employer in both ██████████ and Kentucky for the entire year. The employer provided ██████████ with Internal Revenue Service Form W-2s showing both Kentucky wages and ██████████ wages. The Kentucky wages as reflected on the employer's Form W-2 were reported on the Taxpayers' Kentucky return and the ██████████ wages as reflected on the employer's Form W-2 were reported on the Taxpayers' ██████████ returns. The income taxes paid to ██████████ on the ██████████ wages were claimed on the Taxpayers' 2008 Kentucky return (line 15 of Kentucky Form 740-NP) as a credit against their Kentucky tax liability. The Department's denial of this credit forms the basis for its disallowance of the refund claim.

Under Kentucky law, persons like the Taxpayers who become Kentucky residents during the year are subject to Kentucky individual income tax upon their entire net income from any source after becoming Kentucky residents and upon their incomes from Kentucky sources prior to becoming Kentucky residents. 103 KAR 17:060 § 2. Nonresidents of Kentucky are liable for Kentucky income tax only upon the net income derived from services performed in Kentucky or from property located in Kentucky. 103 KAR 17:060 § 4(1). See also KRS 141.020(1), (4) and (6).

A credit against Kentucky income tax for income taxes paid to other states is provided for in KRS 141.070(1). This credit applies only where a resident of this state has become liable for income tax to another state upon all or part of his or her net income derived from sources outside Kentucky. In short, the same income of a Kentucky resident must be taxed in both Kentucky and the other state and this income must be from activities engaged in or carried on outside Kentucky in order for this credit to be applicable. In addition, KRS 141.070(2) provides an exemption from Kentucky income tax for nonresidents earning income in Kentucky where those nonresidents' home state allow a similar exemption for Kentucky residents earning income there. See 103 KAR 17:140. Neither situation recognized in KRS 141.070 as allowing a credit or exemption has been shown to be applicable here.

The denial of the credit claimed by the Taxpayers on their return results in a correct computation of their Kentucky individual income tax liability for 2008. With the adjustment to the Taxpayers' reported tax liability effected by the denial of this credit, the Taxpayers are not paying Kentucky income taxes upon any income derived from services performed in ██████████ prior to their becoming Kentucky residents, but are instead paying the amount of Kentucky income tax properly owed by the Taxpayers under Kentucky law as Kentucky residents. KRS 141.020(1), (4) and (6); 103 KAR 17:060 § 2(1). The Department's determination of the Taxpayers' tax liability is presumed correct and the burden of proving otherwise and that they are entitled to a refund rests squarely upon the Taxpayers. See, e.g., Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955); Sherwin-Williams Co. v. United States, 403 F.3d 793, 796 (6<sup>th</sup> Cir. 2005); KRS 141.050(1). The Taxpayers have not provided any evidence that would overcome this presumption of correctness and establish their entitlement to the refund claimed and in particular, they have not established that the requirements for the credit allowed by KRS 141.070(1) have been met.

For the reasons stated above, the Department's denial or disallowance of the refund claimed by the Taxpayers on their 2008 Kentucky income tax return was correct and the Taxpayers' protest of that disallowance is hereby rejected.

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.

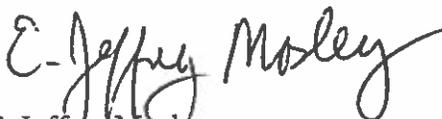
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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