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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2011-10
February 15, 2011

Assessment of Income Tax on Additional Taxable Income
for Tax Year 2000

FINAL RULING

The Kentucky Department of Revenue has issued an individual income tax assessment against [REDACTED] for the taxable year 2000. The following table provides a breakdown of the amount of tax due, penalty, and accrued interest as of the date of this final ruling:

TAX YEARS	TAX	INTEREST AS OF 02/15/2011	PENALTY	TOTAL
2000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTALS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The assessment is based upon the taxpayer's failure to provide information substantiating expense deductions on Schedule C of [REDACTED]'s individual income tax return for the taxable year 2000. The disallowance of the deductions resulted in additional taxable income for Kentucky. The records of the Kentucky Department of Revenue disclose that [REDACTED]'s net taxable income for the

taxable year 2000 is based on information obtained from the Internal Revenue Service under the authority of Section 6301 of the Internal Revenue Code, KRS 141.010 and KRS 141.020.

At issue is whether the information obtained from the Internal Revenue Service for the taxable year 2000 is evidence of taxable income and whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on such income. That information allowed the Department of Revenue to issue an assessment for 2000.

On the originally filed Kentucky individual income tax return, [REDACTED] deducted the same expenses as on his Federal income tax return. But those deductions had been disallowed by the Internal Revenue Service. Accordingly, the Kentucky Department of Revenue also disallowed such deductions on the Kentucky return. Correspondences had been sent out to [REDACTED] requesting him to provide additional information for the Kentucky Department of Revenue to review and reconsider the assessment if he thought the assessment was incorrect. However, [REDACTED] did not submit any information to the Kentucky Department of Revenue.

The federal courts have held that tax deductions and credits are matters of legislative grace and that a taxpayer must clearly establish his or her entitlement to a tax credit or deduction. 330 West Hubbard Restaurant Corp. v. United States, 203 F.3d 990, 997 (7th Cir. 2000); Schiff v. United States, 942 F.2d 348, 352 (6th Cir. 1991). A tax assessment is presumed to be correct and burden rests upon the taxpayer to establish that it is erroneous. Delaney v. C.I.R., 99 F.3d 20, 23 (1st Cir. 1996). The Kentucky courts have likewise recognized these well-settled principles of law. Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955); Bigelow v. Reeves, 285 Ky. 831, 149 S. W. 2d 499 (1941); Epsilon Trading Co. v. Revenue Cabinet, 775 S. W. 2d 937 (Ky. App. 1989). [REDACTED] has the burden of proving his entitlement to the tax deductions. However, [REDACTED] has not established, and cannot establish, his entitlement to the tax deductions he claimed on his 2000 individual income tax return.

Based upon the available information, and the applicable statutes, the outstanding individual income tax assessment issued against [REDACTED] for the 2000 taxable 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