



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:

[REDACTED] AND [REDACTED]

Contact: [REDACTED] and [REDACTED]

FINAL RULING NO. 2011-13  
March 4, 2011

Assessment of Individual Income Tax  
Tax Year 2007

**FINAL RULING**

The Kentucky Department of Revenue ("the Department") has issued individual income tax assessments to [REDACTED] and [REDACTED] ("the Taxpayers") for the taxable year 2007. 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 YEAR	TAX	INTEREST	FEES	PENALTIES	TOTAL
2007	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The assessments resulted from the Taxpayers' deduction of tuition expenses paid to an educational institution for their dependent's pre-school program. At issue is whether these tuition expenses qualify for the tuition tax credit provided for in KRS 141.069.

Subsection 2 of KRS 141.069 provides:

For taxable years beginning after December 31, 2004, an individual may deduct from the tax computed under KRS 141.020 a nonrefundable credit for qualified tuition and related expenses required for enrollment or attendance of the taxpayer, taxpayer's spouse or any dependent at an eligible Kentucky educational institution. The credit shall be twenty-five percent (25%) of the federal credit allowable under Section 25A of the Internal Revenue Code.

Subsection 1 of KRS 141.069 further states:

As used in this section, “eligible Kentucky education institution” means an institution as defined by Section 25A of the Internal Revenue Code that is located within the Commonwealth of Kentucky.

Kentucky’s income tax law also states:

Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes.

KRS 141.050(1). 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 (7<sup>th</sup> Cir. 2000); Schiff v. United States, 942 F.2d 348, 352 (6<sup>th</sup> 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 (1<sup>st</sup> 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). As we shall see below, the Taxpayers have not established, and cannot establish, their entitlement to the tuition tax credit they claimed on their 2007 individual income tax return.

As we have seen above, a requirement of the credit claimed by the Taxpayers is that the “qualified tuition and related expenses [be] required for enrollment or attendance of the taxpayer, taxpayer’s spouse and any dependent at an eligible Kentucky education institution.” KRS 141.069(2). An “eligible Kentucky education institution” is in turn defined to mean “an institution as defined by Section 25A of the Internal Revenue Code that is located within the Commonwealth of Kentucky.” KRS 141.069(1).

Section 25A(f)(2) of the Internal Revenue Code (or 26 U.S.C. § 25A(f)(2)) states:

- The term “eligible educational institution” means an institution –
- (A) which is described in section 4 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and
  - (B) which is eligible to participate in a program under title IV of such Act.

The federal income tax regulations provide the following definition of eligible educational institution under 26 U.S.C. § 25A:

- (b) *Eligible educational institution* – (1) *In general.* In general, an *eligible educational institution* means a college, university, vocational school, or other postsecondary educational institution that is –
- (i) Described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, (generally all accredited public, non-profit, and proprietary postsecondary institutions); and
  - (ii) Participating in a Federal financial aid program under title IV of the Higher Education Act of 1965 or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

26 C.F.R. § 1.25A-2(b).

Thus, the tax credit claimed by the Taxpayers is only available for qualified tuition and related expenses required for enrollment or attendance at a postsecondary educational institution such as a college or university. The Taxpayers therefore were not entitled to the credit for expenses associated with their dependent's participation or enrollment in a pre-school program. The Department therefore properly assessed additional tax based upon its denial of the credit claimed by the Taxpayers.

Based upon the available information, and the applicable statutes, the outstanding individual income tax assessment issued against ██████████ and ██████████ for the 2007 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.

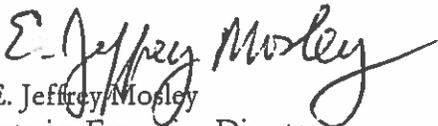
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the

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