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Governor

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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

Final Ruling No. 2011-14  
March 4, 2011

Denial of 2009 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 for the new home credit was received by the DOR on [REDACTED], 2010; however, the application was not signed by the seller and was denied. Another application was received by the DOR on [REDACTED], 2010 with a seller's certification indicating that the residence had in fact been previously occupied. That application was accordingly denied since the purchased residence did not meet the requirements of KRS 141.388.

The sole basis of the DOR's denial of the new home tax credit is that the purchased residence had been previously occupied.

The credit in question is allowed "against the tax imposed by KRS 141.020" to "a qualified buyer who purchases a qualified principal residence within the approved time". KRS 141.388(2)(a) and (b). KRS 141.388(1)(e) defines a qualified residence as follows:

(e) “Qualified principal residence” means a single family dwelling which is:

1. Either detached or attached;
2. Certified by the seller as having never been occupied; and
3. Purchased to be the principal residence of the qualified buyer for a minimum of two (2) years.

[Emphasis added]Furthermore, KRS 141.388(4)(a) specifically states that an “application for the new home tax credit shall be void if...[t]he home has been previously occupied.” See also 103 KAR 17:150.

states that the realtor and the builder misrepresented the property as qualified for the credit. However, the seller’s certification on the application received by the DOR clearly states that the property had previously been occupied, rendering the credit inapplicable. See KRS 141.388(2)(a) and (b); (4)(a); 103 KAR 17:150 § 3(1)(d) and (3)(b).

Under the facts and applicable law stated above, the property purchased did not qualify for the new home tax credit pursuant to KRS 141.388.

For 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 AND ADMINISTRATION CABINET

  
E. Jeffrey Mosley  
Interim Executive Director  
Office of Legal Services for Revenue