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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ and ██████████

Contact: ██████████ and ██████████
██████████

FINAL RULING NO. 2011-53
July 1, 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 ██████████ and ██████████ pursuant to KRS 141.388. This application, which was received by the DOR on ██████████, 2011, states that the new home was purchased on ██████████, 2010. 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:

* * * * *

- (b) The application is not received within seven (7) calendar days from the purchase; or

Under the facts and applicable law stated above, the application at issue is void because it was not received by the DOR within seven days of the purchase of the new home in question and is therefore void. ██████████ and ██████████ claim that ██████████ Bank faxed the application to the DOR after the closing of the new home. It is the DOR's position that the application was received on ██████████, 2011 as no proof has been provided to substantiate the assertion of ██████████ and ██████████ that the application was timely and properly submitted.

For the reason stated above, the new home tax credit application was properly denied in this case pursuant to KRS 141.388(2)(c) and (4)(b).

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