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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ and ██████████

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

FINAL RULING NO. 2011-70
August 11, 2011

Assessment of Income Tax and Refund Claims
for the 2007 and 2008 Tax Years

FINAL RULING

The Kentucky Department of Revenue (the "DOR") has issued individual income tax assessments against ██████████ and ██████████ ("the Taxpayers") for taxable years 2007 and 2008. The Taxpayers made full payment of tax and interest assessed on the notices of tax due but continue to disagree with the DOR's determination. The following table provides a breakdown of the tax and accrued interest paid by the Taxpayers for which they are now requesting a full refund:

Period	Tax	Interest	Total
2007	██████████	██████████	██████████
2008	██████████	██████████	██████████
TOTAL	\$ ██████████	\$ ██████████	\$ ██████████

The Taxpayers are full-year Kentucky residents and are married and file a joint return. They are also shareholders in an S Corporation that conducts business in both Kentucky and ██████████. A routine review of the taxpayer's individual income tax returns for 2007 and 2008 was conducted in order to determine the accuracy of the returns. An adjustment was made to disallow a credit for taxes paid by the S Corporation for the ██████████ excise tax on their individual income tax returns.

Kentucky does allow credits to individuals for taxes paid to other states. KRS 141.070(1) provides:

Whenever an individual who is a resident of this state has become liable for income tax to another state upon all or any part of his net income for the taxable year, derived from sources without this state and subject to taxation under this chapter, the amount of income tax payable by him under this chapter shall be credited on his return with the income tax so paid by him to the other state, upon his producing to the proper assessing officer satisfactory evidence of the fact of such payment, except that application of such credits shall not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state ignored.

At issue in this dispute is whether the Taxpayers can claim a deduction for the excise tax paid to ██████████ by the S Corporation on their individual income tax return for the 2007 and 2008 tax years.

It is the Taxpayer's position that the excise tax paid to ██████████ is an income tax and that since they were owners, they should be allowed to pass through the excise tax paid by the S Corporation to their individual Kentucky tax return as a credit for taxes paid to another state in order to avoid double taxation.

This situation is indistinguishable from the appeal decided by the Kentucky Board of Tax Appeals ("KBTA") in Baughers v. Department of Revenue, No. K-19188, 2004 WL 3186436 (Ky. Bd. Tax Appeals, File No. K02-R-29, November 22, 2004). The KBTA ruled as follows:

8. The Baughers were never and could never be liable for the tax paid by Three Amigos to Tennessee. The tax is not imposed upon the Baughers; instead it is imposed on a Three Amigos, a separate entity.

* * * * *

9. The Baughers also failed to meet the requirement found in KRS 141.070 that the tax must be "paid by [the taxpayer] to the other state.

The foregoing is equally applicable to the taxpayers.

Therefore, it is the DOR's position that, as individuals, the Taxpayers were not liable for the ██████████ excise tax and therefore, would not qualify for the credit set forth in KRS 141.070. The Taxpayer's refund claim is denied.

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.

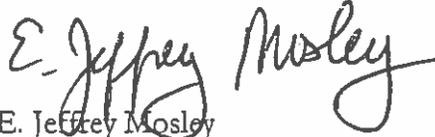
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

A handwritten signature in black ink that reads "E. Jeffrey Mosley". The signature is written in a cursive style with a large, looped "E" and "M".

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