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LORI HUDSON FLANERY
Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2011-75
September 2, 2011

Individual Income Tax assessments for the 2005 tax year.

FINAL RULING

The Kentucky Department of Revenue ("Department") has issued individual income tax assessment to [REDACTED] ("Taxpayer") for the 2005 tax year in the amount of \$ [REDACTED] in tax, plus applicable interest and penalties. This assessment is based on information received from the Internal Revenue Service.

The following table provides a breakdown of the assessment, consisting of the tax due, all assessed fees and penalties, as well as accrued interest as of the date of this final ruling.

TAX YEAR	TAX	INTEREST AS OF 09/02/2011	PENALTIES	TOTAL
2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Taxpayer has returned the notice of the assessment sent him by the Department with the notation that the account number and name on the Department's notice of tax due issued to [REDACTED] is the property of the United States and/or the State of Kentucky and that the notice should be forwarded to the United States Treasury and/or the Kentucky Treasury for settlement of account. The Department has treated this as a protest; however, the Taxpayer's protest was not accompanied by any supporting statement, as required by KRS 131.110(1).

The Department obtained information from the Internal Revenue Service pursuant to 26 U.S.C. §6103, indicating that the Taxpayer had taxable income during 2005. KRS 141.020(1) states, in part, as follows:

An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter[.]

The Department's records reflect that the Taxpayer has not filed a Kentucky Individual Income Tax Return for the 2005 tax year. The Department accordingly issued the Taxpayer an estimated tax assessment pursuant to KRS 131.180(4), which states:

If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due [.]

KRS 131.110(1) states:

The Department of Revenue shall mail to the taxpayer a notice of any tax assessed by it. The assessment shall be due and payable if not protested in writing to the department within forty-five (45) days from the date of notice. Claims for refund of paid assessments may be made under KRS 134.580 and denials appealed under KRS 131.340. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of the extension may be reviewed in the same manner as a protested assessment.

KRS 131.110(2) states in part, as follows:

After a timely protest has been filed, the taxpayer may request a conference with the department[.]

On [REDACTED], 2011 and [REDACTED], 2011, the Department sent the Taxpayer a letter requesting a supporting statement setting forth the grounds upon which his protest was being made and an offer to contact the Department to schedule a conference to discuss this matter. The Taxpayer has neither requested a conference nor has he provided any information or documentation to support his protest. The Kentucky courts have held that KRS 131.110(1)

imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with “something more substantial than mere denials of tax liability.” Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, 698 S.W.2d 528, 530 (Ky. App. 1985). In order to make a valid protest, a taxpayer must “provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

The assessment in question is presumed correct and the burden rests upon the Taxpayer to prove otherwise. Based upon the information available to the Department and the absence of evidence to the contrary, this assessment is valid and a legitimate liability owed to 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.

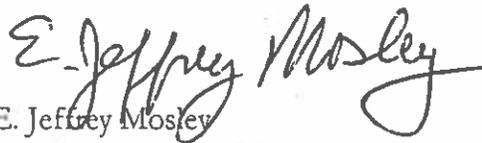
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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