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LORI HUDSON FLANERY  
Secretary

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Commissioner

In the matter of:

[REDACTED] and [REDACTED]

Contact: [REDACTED] and [REDACTED]  
[REDACTED]

FINAL RULING NO. 2012-15  
March 7, 2012

Denial of Individual Income Tax Refund Claims for  
the 2005 and 2006 Tax Years

**FINAL RULING**

The Kentucky Department of Revenue ("the Department") has denied individual income tax refund claims submitted by [REDACTED] and [REDACTED] ("the Taxpayers"). The amounts of these refund claims and the tax years to which these claims relate are set forth in the table below:

Taxable Years	Tax
2005	\$ [REDACTED]
2006	\$ [REDACTED]
Total	\$ [REDACTED]

The refund claims in question were asserted by amended returns (Form 740-X) in which the Taxpayers increased their itemized deductions by \$ [REDACTED] for 2006 and \$ [REDACTED] for 2005. The Taxpayers claim these increases in their itemized deductions as charitable deductions. They state

that these amounts represent the cost of or expenses associated with the use of their property, a farm, by boy scouts and their leaders, including such items as pool chemicals for a swimming pool on the property, water, firewood, electricity, fuel incurred in the maintenance of the portion of the property used, hired labor, and additional gravel for a farm road. As indicated above, the Department denied the Taxpayers' refund claims, which they have protested in accordance with KRS 131.110 and 134.580(3). See also KRS 141.235(2).

The Kentucky individual income tax is based upon the federal income tax. See, e.g., KRS 141.020(1); 141.010(11). To this end, KRS 141.050(1) specifically 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.

The Taxpayers' refund claims are based upon their assertion that they are entitled to charitable deductions in addition to those they originally reported. The source of the charitable deduction is the federal income tax law, in particular 26 U.S.C. § 170. The federal courts have held that a taxpayer has the burden of proving his or her entitlement to a tax deduction. United Dairy Farmers v. United States, 267 F.3d 510, 515-16 (6<sup>th</sup> Cir. 2001); Schiff v. United States, 942 F.2d 348, 352 (6<sup>th</sup> Cir. 1991). So have the courts of Kentucky. Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955); Bigelow v. Reeves, 285 Ky. 831, 149 S.W.2d 499 (1941). Finally, a taxpayer bears the burden of establishing his or her right to a tax refund and the amount of that refund. Sherwin-Williams Co. v. United States, 403 F.3d 793, 796 (6<sup>th</sup> Cir. 2004); Great Northern Nekoosa Corp. v. United States, 711 F.2d 473, 475 (1<sup>st</sup> Cir. 1983).

As noted above, the Taxpayers are claiming a deduction for a contribution of the right to use their property. The federal law is clear, however, that a taxpayer is "not allowed to take a deduction [under 26 U.S.C. § 170] if the charitable gift consists of less than the taxpayer's entire interest in the property." Glass v. Comm'r, 471 F.3d 698, 706 (6<sup>th</sup> Cir. 2006). See also 26 U.S.C. § 170(f)(3). The applicable federal regulation specifically provides that "a contribution of the right to use property which the donor owns, for example, a rent-free lease, shall be treated as a contribution of less than the taxpayer's entire interest in such property." 26 C.F.R. § 1.170A-7(a)(1). There are a few narrow exceptions to this rule none "of" which are applicable to the Taxpayer's situation. See 26 C.F.R. § 1.170A-7(b). This regulation provides the following illustration of this rule:

Example 1. A, an individual owning a 10-story office building, donates the rent-free use of the top floor of the building for the year 1971 to a charitable organization. Since A's contribution consists of

a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

26 C.F.R. § 1.170A – 7(d). See also Van Der Lee v. Comm’r., T.C. Memo. 2011-234, 2011 WL 4502529 (U.S. Tax Ct. September 29, 2011)(disallowing claimed charitable deduction of rental value of residence plus portion of maintenance expenses); Logan v. Comm’r., T.C. Memo. 1994-445, 1994 WL 468205 (U.S. Tax Ct. August 31, 1994); Peters v. Comm’r., T.C. Memo. 1976-170, 1976 WL 3363 (U.S. Tax Ct. May 27, 1976).

The foregoing establishes that the Department’s denial of the Taxpayers’ refund claims was correct. The Taxpayers’ charitable deductions underlying their refund claims may also not be properly substantiated. See 26 U.S.C. § 170(a)(1) and (f)(8); 26 C.F.R. § 1.170A-13. This point and any other circumstance that might require denial of these deductions need not be addressed here because, as a threshold matter, the Taxpayers are not entitled to these deductions for the reasons stated above.

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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED



