



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
501 HIGH STREET  
FRANKFORT, KENTUCKY 40620  
Phone (502) 564-3226  
Fax (502) 564-3875  
www.kentucky.gov

LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2012-16  
March 9, 2012

2008 Individual Income Tax Assessment  
on Unreported Income

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued an individual income tax assessment to [REDACTED] ("the Taxpayer") for the taxable year 2008. The following table provides a breakdown of the amount of tax and penalty assessed, as well as interest accrued as of the date of this final ruling:

Period	Tax	Interest	Penalty	Total
2008	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Taxpayer is a Kentucky resident and therefore his entire net income is subject to Kentucky income tax. KRS 141.020(1); 103 KAR 17:060 § 1. Net income is "gross income" as defined in Section 61 of the Internal Revenue Code "minus the deductions allowed individuals by Section 62 of the Internal Revenue Code" and as modified and adjusted by various provisions of Kentucky law. See KRS 141.010(9), (10) and (11). Section 61 of the Internal Revenue Code provides that "gross income means all income from whatever source derived..."

The assessment set forth above has resulted from the Taxpayer's failure to report on his 2008 Kentucky individual income tax returns \$ [REDACTED] in unemployment compensation he received from the Kentucky Education Cabinet's Division of Unemployment Insurance during 2008. Section 85(c) of the Internal Revenue Code specifically states:

In the case of an individual, gross income includes unemployment compensation.

Subsection b of section 85 of the Internal Revenue Code further states:

For purposes of this section, the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

Thus, the unemployment compensation received by the Taxpayer from the Kentucky Education Cabinet's Division of Unemployment Insurance was unquestionably subject to the Kentucky individual income tax and should have been reported as such by the Taxpayer on his 2008 return. KRS 141.020; 141.010(9), (10) and (11).

Interest on the assessment has been calculated in accordance with KRS 131.183(1). That statutory provision states:

All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate. The tax interest rate for tax liabilities that are assessed on or after July 1, 1982, shall be sixteen percent (16%). This tax interest rate shall apply until January 1, 1983, when the tax interest rate shall be adjusted as provided in this section. The commissioner of revenue shall adjust the tax interest rate not later than November 15 of any year, beginning in 1982, if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year.

As indicated above, a penalty has been applied pursuant to KRS 131.180(2), by virtue of the Taxpayer's failure to have timely paid at least 75% of the income tax determined by the Department to be due for the taxable year 2008. This provision states:

(2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).

See also KRS 141.990(1).

Based upon the foregoing, the outstanding individual income tax assessment issued to [REDACTED] for the 2008 taxable year is a valid liability due 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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

























