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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted]

Contact: [redacted]

FINAL RULING NO. 2012-34
June 21, 2012

Denial of 2009 New Home Tax Credit Application

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued an individual income tax assessment to [redacted] ("the Taxpayer") for the taxable year 2010. The following table provides a breakdown of the amount of tax assessed as well as accrued interest and fee as of the date of this final ruling:

Period	Tax	Interest	Fee	Total
2010	$[redacted]	$[redacted]	[redacted]	$[redacted]

[redacted] filed his 2010 Individual Income Tax Return claiming a $[redacted] new home tax credit. The Department of Revenue's Compliance Section of the Division of Individual Income Tax reviewed the return and disallowed the credit because an application was not timely filed. A tax deficiency in the amount of $[redacted] resulted from disallowing this credit.

The Department has denied the application for a new home tax credit submitted by [redacted] pursuant to KRS 141.388. This application, which was received by the Department on [redacted], 2011, states that the home in question was purchased on [redacted], 2010. The sole basis of the Department's denial of the credit is that this application was not submitted to the Department 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:
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> * * * * *
>
> (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 Department within seven days of the purchase of the new home in question. [redacted] maintains that he contacted the Department and was advised that the time for filing a new home tax credit application had expired.

The law is clear, however, that "[e]very person is conclusively presumed to know the law." Oppenheimer v. Commonwealth, 305 Ky. 147, 202 S.W.2d 373, 375 (1947). Our state's highest court long ago observed that

> [t]here is a maxim as old as the law itself, ignorantia legis neminem excusat, 'ignorance of the law excuses no one', 42 C.J.S. page 380. This is a rule of necessity, otherwise ignorance of the law would furnish immunity from punishment for violations of the Criminal Code and immunity from liability for violations of personal and property rights. Topolewski v. Plankington, 143 Wis. 52, 73, 126 N.W. 554, 561. In Logsdon v. Haney, 74 S.W. 1073, 25 Ky. Law Rep. 245, it was written that this maxim has been applied with the same rigor in this jurisdiction as elsewhere, and that one's non-action through ignorance of the law could not be allowed to extend or enlarge his legal rights.

Freeman v. Louisville & Jefferson Planning & Zoning Comm'n, 380 Ky. 360, 214 S.W.2d 582, 583 (1948). In this case, the plaintiff argued that it was not aware of an amendment to a law shortening its time to file an appeal. The court rejected that argument, holding that

> like all changes made in the law by the Legislature, it was necessary for the litigants to keep themselves informed thereof–ignorance on the part of a litigant of a change the Legislature has made in the law will not excuse him from its effect nor allow him to extend or enlarge his legal rights.

Id. at 584. By the same token, ignorance of the deadline for submission of the application of the new home tax credit and of the procedure for obtaining that credit cannot permit the Department to overlook non-compliance with that deadline. It was incumbent upon [redacted] to acquaint himself with the law.

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED