STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted] and [redacted]

Contact: [redacted] and [redacted]

FINAL RULING NO. 2012-57
December 4, 2012

Denial of the Individual Income Tax Refund Claim for the 2006 Tax Year

FINAL RULING

The Kentucky Department of Revenue ("the Department") has denied the individual income tax refund claim submitted by [redacted] and [redacted] ("the Taxpayers"). The amount of the refund claim and the taxable year to which the claim relates is set forth in the table below:

Taxable Year	Amount of Refund Claim
2006	$[redacted]
Total	$[redacted]

The Taxpayers' refund claim was made on a 2006 Kentucky return (Form 740-NP-R) in which they requested a refund of Kentucky individual income tax withheld during 2006 from their Kentucky wages or other compensation. The refund claim is based upon the Taxpayers' assertion that they paid income tax on this same income to their state of residence.

The 2006 Kentucky return referred to above was not filed until April 19, 2011; the envelope in which it was mailed and received by the Department had a printed postage stamp dated April 19, 2011. The due date of this 2006 return was April 16, 2007. See KRS 141.160(1); 446.030.

The Department denied the Taxpayers' refund claim made by this return as untimely under the applicable statutory and regulatory provisions. See KRS 141.235(2); 134.580(3) and (5); 103 KAR 15:040 § 3(1). The Taxpayers have protested this denial in accordance with KRS 131.110 and 134.580(3).

As we have seen above, the Taxpayers' 2006 return asserting the refund claim in question was considered filed by the Department as of April 19, 2011, which was the date of the postage on the envelope in which it was received. The tax that is the subject of this claim was withheld during 2006 and the due date of the 2006 return was April 16, 2007. Under the applicable statute of limitations, the Taxpayers had "four (4) years from the due date of the return or the date the tax was paid, whichever is later" to file their refund claim for 2006. 103 KAR 15.040 § 3(1). See also KRS 141.235(2); 134.580(3) and (5). April 19, 2011 is more than four years from April 16, 2007, which is the operative starting point in this case for purposes of calculating whether this statute of limitations has run, as it was later than the payment (or the withholding) of the taxes that are the subject of the refund claim. Thus, under these undisputed facts, the Taxpayers' refund claim was untimely and could not be honored by the Department.

The foregoing establishes that the Taxpayers' refund claim was untimely under the applicable statute of limitations and that the Department's denial of that refund claim was correct. Accordingly, the Department's denial of the refund claim is hereby upheld and the Taxpayers' protest of that denial is disallowed.

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

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