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In the matter of:

██████████ & ██████████

Contact:

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FINAL RULING NO. 2014-41
November 7, 2014

Individual Income Tax Assessments
For the Years Ended 2008, 2009, & 2010

FINAL RULING

The Kentucky Department of Revenue (“the Department”) issued individual income tax assessments to ██████████ & ██████████ (“the Taxpayers”) for the taxable years ended 2008, 2009, and 2010. 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/Fee	Total
2008	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
2009	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
2010	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

The Taxpayers filed a Kentucky individual income tax return for full-year residents only for the taxable year ending 2010. The Taxpayers filed both the Kentucky and federal income tax returns for 2010 listing a Kentucky address. The Taxpayers also filed an ██████████ individual income tax return for 2010 using a Kentucky address and with the residency status for both Taxpayers of “Nonresident/indicate state -> KY.” The Taxpayers claimed a refund for their withholding taxes paid to ██████████ under reciprocity, as they had paid taxes to Kentucky as full-time residents.

Subsequently, in 2011, the Taxpayers filed both an amended individual income tax return for 2010 (“Amended Return”) and an individual income tax return for nonresident or part-year resident for 2010 (“Part-Year Return”). The amended return stated that “Taxpayer is a full-time resident of [REDACTED],” and the Part-Year Return stated that the Taxpayer lived in Kentucky from [REDACTED], 2010 to [REDACTED], 2010, at which point the Taxpayer moved to [REDACTED]. The two returns were both partially completed, and the amounts listed for income and other items on the returns do not match and are inconsistent.

The Department denied the Amended Return and the Part-Year Return on the basis that the Department could not determine that the taxpayers had ever ceased to be domiciled in Kentucky in 2010. The Taxpayers protested the denial, stating that while [REDACTED] could be considered a part-time resident of Kentucky, [REDACTED] was never a full-time resident of Kentucky in 2010.

The Taxpayers provided an amended 2010 return for [REDACTED], where they changed their state of residency to [REDACTED]. The Department asked for proof of payment of taxes to [REDACTED], as the 2010 bill could be adjusted downwards to reflect a payment of taxes to another state, but no proof of payment was ever provided to the Department.

The Department discovered that the Taxpayers had not filed Kentucky returns for 2008 or 2009, but had filed a federal individual income tax return for 2009 using the same Kentucky address. In addition, a 2008 W-2 for [REDACTED] listed the same Kentucky address. Assessments were issued for 2008, 2009 and 2010, which the Taxpayers protested. While information was provided by the Taxpayers in connection with the denial of the Amended Return and the Part-Year Return, no supporting statement or other evidence has been provided with respect to the protest of the 2008 and 2009 assessments.

Kentucky law imposes an annual income tax on every resident individual of Kentucky. KRS 141.020. A resident means an individual domiciled in Kentucky or an individual who is not domiciled in Kentucky, but maintains a place of abode in this state and spends more than one hundred eighty-three (183) days of the taxable year in this state. KRS 141.010(17). In order for a resident of Kentucky to establish that he has become a nonresident, he must provide proof of a bona fide intention to reside permanently elsewhere before the end of the taxable year and that he has spent less than one hundred eighty-three (183) days in Kentucky during the tax year. 103 KAR 17:010 Sec. 2.

Domicile is “that place where a person has his fixed, permanent home, and to which he has, whenever absent, the intention of returning and from which he has no present intention of moving.” St. John v. St. John, 163 S.W.2d 820, 822 (Ky. 1942). A person has only one domicile and once established, that domicile is not changed without clear action by that person. Erwin v. Benton, 87 S.W. 291, 294 (Ky. 1905). A person does not have to live continuously at a place to

maintain that place as his domicile. He can be away for significant periods of time for various reasons (e.g., business or pleasure) and still retain that place as his domicile. Wheeler v. Burgess, 93 S.W.2d 351 (Ky. 1936); 25 Am.Jur.2d Domicile § 25 (2006).

In determining one's domicile, courts consider factors such as the location of voting registration, real property, personal property, bank accounts, driver's licenses, automobile registration, and employment. Lundquist v. Precision Valley Aviation, Inc., 946 F.2d 8 (1st Cir. 1991). In Slagel v. Finance and Administration Cabinet Department of Revenue, the Kentucky Court of Appeals held that a taxpayer was domiciled in Kentucky even though he lived and worked in Venezuela. 253 S.W.3d 74, 76 (Ky.App. 2008). The Slagel Court based its decision on the fact that the taxpayer had his voter's registration, driver's license, property, bank accounts, and a business in Kentucky; and he had family living in Kentucky. Id. Similarly, in Wheeler v. Burgess, the Court held that taxpayers were domiciled in Kentucky who had moved to Europe for multiple years for work reasons, but who had maintained property in Kentucky to return to when the work in Europe was finished. 263 Ky. 693, 93 S.W.2d 351, 355 (1931).

The ██████ County Property Valuation Administrator's records indicate that the Taxpayers purchased a home in ██████, Kentucky in ██████ 2009. However, utilities were obtained by the Taxpayers' for the ██████, Kentucky address in 2008. The Taxpayers still were the owners of the home in ██████, Kentucky in 2014.

Records obtained from the driver's license database indicated that ██████ renewed her Kentucky driver's license on ██████, 2009. The ██████, Kentucky address was listed on the license. The license expired ██████, 2013. In addition, ██████ was also registered to vote in Kentucky during the assessment period. Her address on the voter registration records was ██████, Kentucky.

Evidence suggests that the Taxpayers held jobs in the ██████ Kentucky and ██████ area during the assessment period. Articles on the internet stated that ██████ coached soccer at the ██████ and ██████ in ██████ Kentucky during the assessment period. ██████ provided a list of her work history on the internet website LinkedIn. All the jobs listed during the assessment period were in the ██████ area. According to the site, she is still working in the ██████ area. In addition, five Form W-2 Wage and Tax statements were submitted with the Taxpayers 2010 Kentucky Individual Income Tax Return. Four of the five W-2s listed the Taxpayers' address as ██████ Kentucky. ██████ also received in-state tuition at the ██████ based upon her residency in ██████ County, Kentucky.

There was some documentation provided in connection with the denial of the Amended Return and Part-Year Return that suggested that the Taxpayers lived in ██████. However, there were discrepancies associated with the ██████ documentation. The Department of Revenue

requested additional information regarding the [REDACTED] documentation on several occasions. The Taxpayers either failed to adequately supply the requested information or ignored the requests. As a result, the Taxpayers have failed to provide sufficient information to show that the Department of Revenue's assessment for 2010 was incorrect.

In fact, the Taxpayers never responded to the Department of Revenue's letters dated [REDACTED], 2014, [REDACTED], 2014 and [REDACTED], 2014, and the individual income tax assessments remain outstanding. In Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky. App., 698 S.W. 2d 528 (1985), the Court held, inter alia, that

...in a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error.

In Scotty's Construction Company, Inc. v. Commonwealth of Kentucky Revenue Cabinet, Ky. App., 779 S.W. 234 (1989), the Court mentions, "...the circuit court which held that Scotty's failure to submit documentation as required by the statute before the issuance of the final ruling had the effect of failure to preserve appellant's right to review the assessment and on the strength of Eagle Machine set aside the Board's order and reinstated the determination of Revenue." Based upon the foregoing, Taxpayers have failed to provide any documentation with respect to their protest of the 2008 and 2009 assessments, and therefore have failed to preserve their right to have the assessment reviewed pursuant to Scotty's Construction.

Based upon the foregoing, the Taxpayers were domiciled in Kentucky and residents of Kentucky during 2008, 2009, and 2010. Accordingly, the outstanding individual income tax assessments issued to [REDACTED] & [REDACTED] for the 2008, 2009, and 2010 taxable years are valid liabilities due the Commonwealth of Kentucky.

Since the Taxpayers never submitted individual income tax returns for 2008 and 2009, penalties were issued with the corresponding notices for failure to file and nonpayment in accordance with KRS 131.180 (2) and (4). However, only the nonpayment penalty was issued with the 2010 notice in accordance with KRS 131.180(2). In addition, since the taxpayers failed to file the 2008 and 2009 individual income tax returns during the period in which amnesty was available, the cost of collection fee was assessed under KRS 131.440(1). The final due and owing collection fee was assessed under KRS 131.440 (1) with the 2010 assessment.

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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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

Kara M. Ferguson
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



