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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2015-39  
October 1, 2015

Individual Income Tax Assessment for  
Taxable Years 2008 Through 2011

**FINAL RULING**

The Kentucky Department of Revenue (the "Department") has issued individual income tax assessments against [REDACTED] (the "Taxpayer") for the taxable years 2008 through 2011. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as accrued interest as of the date of this final ruling.

	Tax	Interest*	Amnesty Fees	Penalties	Total
12/31/2008	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
12/31/2009	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
12/31/2010	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
12/31/2011	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
<b>TOTAL</b>	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]

\*Interest has been calculated through the date of this final ruling.

The assessments resulted from the Taxpayer's failure to file Kentucky Individual Income Tax returns, Revenue Form 740, for 2008 through 2011 and to pay the tax due for those years as required by KRS 141.020. The records of the Department disclose the Taxpayer's Kentucky net income for 2008 through 2011 is based on information obtained from the Internal Revenue Service (the "IRS") under the authority of Section 6301 of the Internal Revenue Code.

At issue is whether the information obtained from the IRS for the 2008 through 2011 tax years is evidence of taxable income, and also whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on such income.

The Taxpayer protested and stated he was not a Kentucky resident. However, after numerous requests for additional substantiation, the Taxpayer was unable to provide sufficient supporting documentation to disprove Kentucky residency.

KRS 141.020(1) states that “an annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income.” “Net income” is gross income with certain adjustments and minus allowable deductions. See KRS 141.010(10) and (11). Please note that while Kentucky adopts certain federal definitions, its power to tax its residents is found in its own constitutional and statutory authority.

KRS 141.010(17) defines a “resident” as including an individual domiciled within this state. Information obtained by the Department and from the IRS indicates the Taxpayer was domiciled in Kentucky during the tax years in question. For instance, the Taxpayer identified a Kentucky address on each Individual Income Tax return filed with the IRS for each period identified. The Taxpayer was registered to vote in Kentucky and exercised this privilege for the 2008, 2010, 2012, and 2014 periods. The Taxpayer possessed a valid Kentucky driver’s license for each period identified with renewal dates in both 2010 and 2014. The Taxpayer was issued wage and earnings statements identifying a Kentucky address for each period identified.

For Kentucky income tax purposes, “gross income” in the case of taxpayers other than corporations means “gross income” as defined in Section 61 of the Internal Revenue Code (26 U.S.C. §61). See KRS 141.010(9). “[G]ross income” is defined in 26 U.S.C. §61(a) to mean “all income from whatever source derived” and includes “[c]ompensation for services”. Further, 26 C.F.R. §1.1-1(b) provides that “[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.”

Interest has accrued and continues to accrue until the remaining tax due has been paid. See KRS 141.220; 141.985; 131.183; 103 KAR 15:050 § 4. Late payment penalty was properly assessed under KRS 131.180(2). The Taxpayer has failed to provide any documentation showing why the penalty should not apply. A failure to file penalty was properly assessed under KRS 131.180(4). The Taxpayer has failed to file Kentucky Individual Income Tax returns for each identified period. In addition a cost of collection fee resulting from the assessment of additional tax after the amnesty period for taxable periods ending prior to October 1, 2011, was properly assessed under KRS 131.440(1) for the 2008 and 2009 periods. The Taxpayer has failed to provide any documentation showing why the fee should not apply.

Based upon the available information, and the applicable statutes, the outstanding Individual Income Tax assessments issued against the Taxpayer for the 2008 through 2011 tax years are valid liabilities due the Commonwealth of Kentucky.

This letter is the final ruling of the Department.

### 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.

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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

DEPARTMENT OF REVENUE

A handwritten signature in black ink that reads "Doug Rowell". The signature is written in a cursive, flowing style.

Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED