



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. 2015-43  
October 16, 2015

Individual Income Tax Assessment for  
Taxable Year 2011

**FINAL RULING**

The Kentucky Department of Revenue (“the Department”) has issued an individual income tax assessment against [REDACTED] (“the Taxpayer”) for the taxable year 2011. The following table provides a breakdown of the amount of tax due, all penalties, and accrued interest as of the date of this final ruling.

Period	Tax	Interest	Penalties	Total
12/31/2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The assessment resulted from the Taxpayer’s failure to file a Kentucky Individual Income Tax return, Revenue Form 740, for 2011 and to pay the tax due as required by KRS 141.020. The records of the Department disclose the Taxpayer’s Kentucky net income for 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 2011 tax year 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's protest letter included the following statements; "refused for fraud, without dishonor and without recourse to me."; "Your assessment is refused for fraud because your department functions on the same assumption that even compensation for labor is taxable. I am unsure how or where you obtained your information to perform your assessment. If it was from W-2's then you've based it on a fraud. If you're merely complying with a request from the IRS who HAS NOT, NOR WILL NOT answer my challenges directly, without revealing their deceptions hidden within their code then I hope you will have enough courage to listen to the truth and not "just do your job" like everybody else."

KRS 141.020(1) states "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 year in question. For instance, the Taxpayer possessed a valid Kentucky driver's license for the tax year identified which is current as of the date of this final ruling. The Taxpayer was issued a wage and earnings statement identifying Kentucky withholding and renewed vehicle licenses in Kentucky for the tax year 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). 26 U.S.C. §61(a) "gross income" means all income from whatever source derived and includes compensation for services. Further, 26 C.F.R. §1.1-1(b) provides "[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."

The Taxpayer was afforded credit for \$ [REDACTED] received as Kentucky withholding from his employer.

Correspondence dated [REDACTED], 2015, [REDACTED], 2015, and [REDACTED], 2015, requesting documentation in support of the protest was sent to the Taxpayer. No documentation was received with respect to these requests.

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.

A failure to file penalty was properly assessed under KRS 131.180(4). The Taxpayer has failed to file a Kentucky Individual Income Tax return for the identified period.

Based upon the available information, and the applicable statutes, the outstanding Individual Income Tax assessment issued against the Taxpayer for the 2011 tax year is a valid liability 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.

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 Powell". The signature is written in a cursive style with a large, sweeping flourish at the end.

Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED