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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2015-45  
December 4, 2015

Assessment of Income Tax on Unreported Earnings  
Tax Year 2009

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued an individual income tax assessment against [REDACTED] ("the Taxpayer") for the taxable year ended December 31, 2009. The following table provides a breakdown of the amount of tax due and penalty assessed, as well as accrued interest as of the date of this final ruling:

TAX YEARS	TAX	INTEREST	AMNESTY ASSESSMENT FEE	PENALTIES	TOTAL
2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The assessment resulted from the Taxpayer's failure to file a Kentucky Individual Income Tax return, Revenue Form 740, for 2009 and to pay the tax due for those years as required by KRS 141.020. The Taxpayer's Kentucky net income for 2009 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 2009 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 protested the assessment and numerous attempts were made by the Department to contact the Taxpayer to which no responses were received.

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 year in question. The Taxpayer possessed a valid Kentucky driver’s license for the period identified and was registered to vote in the state of Kentucky. The Taxpayer was issued wage statements each identifying a Kentucky address for the 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.”

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 a Kentucky Individual Income Tax return for the 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 2009 period. 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 assessment issued against the Taxpayer for the 2009 tax year shows 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.

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 cursive script that reads "Doug Powell".

Attorney Manager  
Office of Legal Services for Revenue