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Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2016-09
March 10, 2016

Individual Income Tax refund Request
For the Year Ended 2013

FINAL RULING

The Kentucky Department of Revenue (“the Department”) has before it a request for refund of 2013 Individual Income Tax withheld for the 2013 period from [REDACTED] (“the Taxpayer”) in the amount described below:

	Tax	Interest	Total
12/31/2013	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Taxpayer protested the position of the Department regarding the denial of refund equal to \$ [REDACTED] for the 2013 period.

A 2013 Kentucky Individual Income Tax Return, signed by the Taxpayer and dated [REDACTED], 2014, was submitted to the Department for the 2013 period. The return identified a Federal adjusted gross income amount equal to \$ [REDACTED]. This amount, identified as wages by W-2 from [REDACTED], Inc. was then listed as Kentucky adjusted gross income. The return then incorrectly identified this amount as Kentucky taxable income, incorrectly identified a tax amount due of \$ [REDACTED], incorrectly identified Kentucky withholding of \$ [REDACTED] and requested a refund of \$ [REDACTED]. Of the \$ [REDACTED] incorrectly identified as Kentucky state tax withholding, \$ [REDACTED] is identifiable as local income tax, not state tax.

Upon review by the Department, a standard deduction of \$2,360 was applied, reducing Kentucky taxable income to \$[REDACTED]. A personal tax credit of \$20 was allowed. A Kentucky tax liability of \$[REDACTED] resulted. Kentucky state income tax withheld was adjusted to \$[REDACTED], an amount equal to that which was identified by W-2 from [REDACTED], Inc. A refund in the amount of \$[REDACTED] was issued, by check, to the Taxpayer.

The Taxpayer returned the \$[REDACTED] refund check accompanied by a letter of disagreement stating in part, "I am entitled to a **FULL REFUND** of all State "income tax" taken out of my pay. The reason for my disagreement is stated below: [REDACTED] Inc. is a private sector business and they have **NOT** paid me (the Taxpayer) any **FEDERALLY**-connected money for any **FEDERALLY**-connected services performed by me (the Taxpayer). This is identified in 26 U.S.C. §7701 (a)(26). Also, being a private sector worker I (the Taxpayer) am not an "employee as identified in 26 U.S.C. Therefore, I (the Taxpayer) received no "wages" as defined in 26 U.S.C. and as such I (the Taxpayer) am not liable for payment of any State "Income tax" or any type of state "withholding tax". As such I am due a **FULL REFUND** of any and all "income tax" that was withheld from my pay by the State of Kentucky as I am not liable for any payment of any "income tax" as defined in 26 U.S.C. §7701 (a)(26). The refund amount I am owed for overpayment of "income tax" that I am not liable for is \$[REDACTED]" The Taxpayer then submitted an additional return on [REDACTED] 2014. This return requested a reduced refund amount equal to \$[REDACTED]

Further communication stated, "Additionally, the "PAYERS" were not required to report my private sector payments on Form W-2, but did so anyway, and in doing so reported to the IRS my private sector payments are taxable, which they are not. My 2013 private sector payments are not reportable under Internal Revenue Code (IRC) §6041(a) regarding information at source. Neither are said payments reportable under IRC §6041A as the "PAYER/EMPLOYER" are private sector companies. As such, they are not described within the definition of "trade or business" in §7701(a)(26) and the payments made to me cannot, therefore, be characterized as "salaries,...wages,...compensations, remunerations,... or other fixed or determinable gains, profits, and income..." (IRC 6041(a)). Sections 6041(a) only apply to a "person" or "service-recipient" engaged in a "trade or business". The reporting requirement applies only to those individuals or entities when the payments described within these two sections are made to "another person" or "any person", respectively, in the course of a "trade or business"."

Federal form 4852, Substitute for Form W-2, Wage and Tax Statement, was also submitted to the Department by the Taxpayer. This form signed by the Taxpayer and dated [REDACTED], 2014, identified receipt of an incorrect W-2 provided by the employer, [REDACTED], Inc. The form identified corrected amounts for Wages, tips and other compensation of \$0, Social security wages of \$0, Medicare wages and tips of \$0, Advance EIC

payment of \$0, Social security tips of \$0, State income tax withheld (KY) of \$ [REDACTED] and Local income tax withheld ([REDACTED]) of \$ [REDACTED]. Additional information supplied by this form, included answers to the following questions:

- **Question 9** – “How did you determine the amounts on lines 7 and 8 above?” i.e. Corrected amounts for Wages, Social security wages, Medicare wages...(identified above) **Answer by the Taxpayer** – “Records provided by the payer listed on line 5”. The payer identified by line 5 is [REDACTED] Inc.
- **Question 10** – “Explain your efforts to obtain Form W-2, Form 1099-R, or Form W-2c, Corrected Wage and Tax Statement.” **Answer by the Taxpayer** – “None”.

The Department contends the amounts self reported by the Taxpayer as corrected wages on Form 4852 are erroneous. The Taxpayer identifies corrected wages reported as, “Records provided by the payer listed on line 5”. (Reference to line 5 of Form 4852) However, [REDACTED] Inc. reported Wages, tips and other compensation of \$ [REDACTED] by W-2 issued to the Taxpayer for the 2013 period. Additionally, when asked by question 10 of Form 4852 to explain your efforts to obtain a corrected wage and tax statement, the Taxpayer responded, “None”.

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). While Kentucky adopts certain federal definitions, its power to tax its residents is found in its own constitutional and statutory authority.

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). Under 26 U.S.C. §61(a), “gross income” means all income from whatever source derived and includes compensation for services.

KRS 141.010(17) defines a “resident” as including an individual domiciled within this state. Ryan M. Kline has a valid Kentucky driver’s license and a Kentucky address.

IRC §7701(a)(26) defines Trade or Business, “The term “trade or business” includes the performance of the functions of a public office.”

The Taxpayer’s dispute, referencing IRC §7701(a)(26) has no bearing on the gross income reported to the Taxpayer by W-2 from his employer [REDACTED] Inc. As such, amounts reported to the Taxpayer, a Kentucky resident, as wages are taxable per KRS 141.020.

Corrected income amounts, submitted via Form 4852 are disallowed. Therefore, the 2013 return as corrected by the Department, identifying a Kentucky income tax due of \$ [REDACTED] and refund of \$ [REDACTED] stands correct. The requested refund of \$ [REDACTED] is thusly denied.

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 (the "Board") 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, appearing to read "Doug Dowell". The signature is written in a cursive, flowing style.

Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED