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Governor

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**WILLIAM M. LANDRUM III**  
Secretary

**DANIEL P. BORK**  
Commissioner

In the matter of:

██████████ and ██████████

Contact: ██████████ and ██████████

**FINAL RULING NO. 2016-43**  
November 30, 2016

Individual Income Tax Assessment  
Tax Year Ended December 31, 2009

**FINAL RULING**

The Kentucky Department of Revenue (“the Department”) has issued an individual income tax assessment to ██████████ and ██████████ (“the Taxpayers”) for the taxable year ended December 31, 2009. 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:

	Tax	Interest	Amnesty Fees	Penalties	Total
12/31/2009	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

The Taxpayer has protested the Department’s disallowance of miscellaneous deductions it took on Schedule A of its Form 740 (Kentucky Individual Income Tax Return) in the amount of \$ ██████████; the disallowance of a deduction of \$ ██████████ also taken on Schedule A for taxes paid to another state; and the disallowance of a deduction of \$ ██████████ claimed on Schedule M.

Documentation provided in support of the Taxpayers’ protest for deductions of real estate taxes, personal property taxes, home mortgage interest, and charitable contributions were verified and those that have been allowed are as follows: real estate taxes of \$ ██████████; personal property taxes of \$ ██████████; home mortgage interest of \$ ██████████ and charitable contributions of \$ ██████████.

The miscellaneous expenses deduction disallowed from Schedule A was for \$██████████, which was comprised of \$██████████ job expenses, and a \$██████████ tax preparation fee, minus \$██████████ for the 2% limitation of Kentucky adjusted gross income. Based on documentation provided in support of the Taxpayers' protest, \$██████████ has been allowed for the unreimbursed job expenses. This total (\$██████████) plus \$██████████ allowable tax preparation fee, minus the required 2% reduction of \$██████████, equals a total allowable deduction of \$██████████ for this category.

Based on verified documents, the original disallowed expenses from Schedule A of \$██████████ have been reduced by the real estate taxes of \$██████████; personal property taxes of \$██████████; home mortgage interest of \$██████████; contributions of \$██████████ and the allowed miscellaneous deductions of \$██████████. Therefore, \$██████████ of the Schedule A expenses has been disallowed for ██████████ and \$██████████ has been disallowed for ██████████.

A health insurance premium deduction subtracted from federal gross adjusted income via Kentucky Schedule M in the amount of \$██████████ from ██████████ has been verified under protest. Therefore, an additional \$██████████ of the health insurance premium has been allowed for ██████████. Also, an additional health insurance premium was verified and allowed for ██████████ in the amount of \$██████████.

The Taxpayers claimed deductions of \$██████████ of taxes paid to other states. The following amounts were verified and allowed: \$██████████ to ██████████; \$██████████ to ██████████; and \$██████████ to ██████████ for a total of \$██████████. This left \$██████████ that was not verified or substantiated, resulting in the assessment of tax at issue. The Taxpayers have not established their entitlement to the additional \$██████████ they claim for taxes paid to other states.

The deductions discussed above were reduced or disallowed because the Taxpayers failed to submit adequate documentation to substantiate those deductions. Kentucky's individual income is based largely upon the federal individual income tax. See generally KRS 141.020(1); 141.010(9), (10) and (11). The following is stated in KRS 141.050(1):

Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes.

Under the judicial interpretations of the federal income tax law as well as Kentucky law, it is firmly established that the Department's individual income tax assessments are presumed to be correct and a taxpayer has the burden of proving otherwise. See, e.g., Hahn v. Allphin, 282 S.W.2d

824, 825 (Ky. 1955); Bishop v. C.I.R., 342 F.2d 757, 759 (6<sup>th</sup> 1965). “[A]n income tax deduction is a matter of legislative grace and... the burden of clearly showing the right to the claimed deduction is on the taxpayer.” INDOPCO, Inc. v. C.I.R., 503 U.S. 79, 84 (1992). “A taxpayer seeking a deduction must point to an applicable statute and show that he comes within its terms.” Bishop, supra. “The burden of proof to establish a deduction and the amount of it is upon the taxpayer.” Id. See also Bigelow v. Reeves, 285 Ky. 831, 149 S.W.2d 499 (1941); Tennessee Gas & Transmission Co. v. Commonwealth, 308 Ky. 571, 215 S.W.2d 102 (1948).

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 Taxpayers have failed to provide any documentation showing why the penalty should not apply. In addition, a cost of collection or amnesty fee resulting from the assessment of additional tax after the amnesty period for taxable periods ending prior to October 1, 2011, was properly assessed, for the taxable period ending December 31, 2009, under KRS 131.440(1).

After reviewing the protest, and the applicable statutes and case law, it is the position of the Department that the individual income tax assessment issued against the Taxpayers for taxable year 2009 is a valid liability due the Commonwealth of Kentucky.

This letter is the final ruling of the Department.

### APPEAL

For purposes of this final ruling, the terminology “Kentucky Board of Tax Appeals” and “Board” represent both the current Kentucky Board of Tax Appeals, as well as, the Kentucky Claims Commission that was established by Executive Order on August 8, 2016 and is expected to replace the current Kentucky Board of Tax Appeals on October 1, 2016.

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



Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED