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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.
Commissioner

In the matter of:

ESTATE OF [REDACTED]

Contact: [REDACTED]
[REDACTED] Law Office, PSC
[REDACTED]

FINAL RULING NO. 2008-10
March 13, 2008

Inheritance and Estate Tax assessment
for the tax period June 28, 2002

FINAL RULING

The Department of Revenue's audit of the Estate of [REDACTED] ("Estate") for the taxable period [REDACTED], 2002 resulted in an assessment of Inheritance and Estate Tax due to the Commonwealth.

Assessment as of March 12, 2008

Tax Year	Tax Due	Interest	Total Due
[REDACTED]/02	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue are the assessment of interest and the disallowance of a five percent discount on the Estate's tax due.

[REDACTED] died on [REDACTED], 2002. As of [REDACTED], 2005, the Department had no record of receiving the Estate's Kentucky Inheritance and Estate Tax Return. As a result, the Department issued a tentative assessment on that date in accordance with KRS 131.150(1) which states in part that:

When the Revenue Cabinet reasonably believes that any taxpayer has ...done any...act tending to render partly or wholly ineffective

proceedings to assess or collect any...taxes...such tax liability shall become due and payable immediately upon assessment or determination of the amount of taxes due... .

KRS 131.150(2) states in part that:

Under any of the circumstances set out in subsection (1) of this section, the cabinet may make a tentative assessment or determination of the taxes due....

A return was hand delivered to the Department on [REDACTED], 2007. The return reflected tax due in the amount of \$ [REDACTED], which was remitted with the return on that date. The return reflects the signatures of [REDACTED], Executor, and [REDACTED], Preparer, and the signatures are dated [REDACTED], 2002. The Department adjusted the tentative assessment to reflect the tax due as shown on the return and the payment received. The Department assessed interest and disallowed the five percent discount in accordance with KRS 140.210(1), which states:

All taxes imposed by this chapter, unless otherwise provided in this chapter, shall be due at the death of the decedent and shall be payable to the department of Revenue within eighteen (18) months thereafter. If they are paid within (9) months, a discount of five percent (5%) shall be allowed, and if they are paid within eighteen (18) months, no interest shall be charged and collected thereon. If the taxes due are not paid within eighteen (18) months, interest at the tax interest rate as defined in KRS 131.010(6) shall be paid from the expiration of the eighteen (18) months until payment is actually made to the department.

The Estate provided a copy of a letter dated [REDACTED], 2002 from the Estate's attorney, [REDACTED], to [REDACTED], the Executor of the Estate at that time. In the letter, [REDACTED] instructs [REDACTED] to make a check out to the Kentucky State Treasurer for \$ [REDACTED] and return it to [REDACTED]'s office so that it can be attached to the return when it is mailed to the Department. The Estate contends that this letter and the return's signature date of [REDACTED], 2002 prove that the return was filed and the tax paid within the nine month discount period referenced in the statute. Based on this assertion, the Estate requests that the five percent discount be allowed and that interest be waived, even though the Department has no record of receipt of the return or the payment until [REDACTED], 2007.

The Estate further argues that the Department did not properly notify the Estate that the return had not been received as set out in its regulations. However, there is no Kentucky Administrative Regulation requiring the Department to notify a taxpayer that a tax return has not been received.

The Department's letters to the Estate dated [REDACTED], 2007 and [REDACTED], 2007 explained the Department's position and stated that the Estate had the right to request a conference to discuss the protest. To date, the Department has not received a response.

It is the Department's position that as the return was filed after the nine month discount period and as the tax was not paid until after eighteen months after the death of the decedent, the Department correctly disallowed the five percent discount and assessed interest on the tax due as allowed under KRS 140.210.

Based on the foregoing, the Department has determined that the Inheritance and Estate Tax assessment totaling \$ [REDACTED] (plus applicable interest) is a legitimate liability of the Estate of [REDACTED] due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and

3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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,
Finance and Administration Cabinet



Jason Snyder
Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED