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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Protest of Intangible
Intangible Property Tax for 2002-2005

Contact:

[REDACTED]

FINAL RULING NO. 2008-52
August 1, 2008

FINAL RULING

The Department of Revenue currently has an outstanding assessment for intangible ad valorem or property taxes in the amount of \$ [REDACTED] for 2002-2005 against [REDACTED]. A breakdown of the assessment along with applicable penalty and interest is shown in the chart below:

Tax Year	Tax Due	Interest As of 8-1-2008	Penalty As of 8-1-2008	Total Due As of 8-1-2008
January 1, 2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] owned bonds through a broker, [REDACTED], on the assessment dates listed in the chart above. These bonds are taxable as intangible property. [REDACTED] failed to file intangible personal property tax returns for the period January 1, 2002 through January 1, 2005. On [REDACTED], 2006, the Department of Revenue assessed intangible property tax against the bonds held through [REDACTED] in accordance with KRS 132.020(1).

The assessment in question is presumed to be valid and it is the taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). It is undisputed that [REDACTED] is a Kentucky resident in [REDACTED], Kentucky.

On [REDACTED], 2007, the Department of Revenue received a protest letter from [REDACTED] stating that the "[REDACTED] bonds are junk". The Department responded to [REDACTED] with letters on [REDACTED], 2008, [REDACTED], 2008 and [REDACTED], 2008 explaining the basis of this assessment. KRS 131.110(1) requires, to be valid, that a protest of an assessment "must be accompanied by a supporting statement setting forth the grounds upon which the protest is made." The Kentucky Court of Appeals has ruled that under this supporting statement requirement, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Eagle Machine Co. v. Commonwealth, 698 S.W. 2d 528, 529 (Ky. App. 1985).

The courts have held that KRS 131.110(1) is "mandatory in nature" and that failure to submit the supporting statement it requires will result in the taxpayer's loss of the right to further review of the assessment or refund denial in question. Scotty's Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky. App. 1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

For the reasons stated above, the assessment in question is valid and a legitimate ad valorem tax liability of [REDACTED].

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