



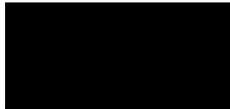
STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40601
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:



Contact:



FINAL RULING NO. 2010-98
December 22, 2010

Unmined Coal Ad Valorem Tax Assessments
For the 2010 Tax Year

FINAL RULING

Pursuant to KRS 132.820, the Department of Revenue has issued ad valorem tax assessments for the 2010 tax year to [REDACTED] and [REDACTED] for unmined coal reserves they owned as of the January 1, 2010 assessment date. These assessments fix the fair cash value of their reserves (Property Account No. [REDACTED], Parcel Identification No. [REDACTED]) at \$ [REDACTED].

The [REDACTED] have protested these assessments and in accordance with KRS 132.820(6) claim \$ [REDACTED] as the true value of the reserves in question. They also assert based upon KRS 132.820(1) that the reserves should not be assessed by the Department for ad valorem taxation "as a distinct interest in real property, separate and apart from the surface estate."

Subsection 1 of KRS 132.820 provides in relevant part the following:

Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Department of Revenue as a distinct interest in real property, separate and apart from the surface real estate unless:

- (a) The unmined coal, oil, and gas reserves, and other mineral or energy resources are owned in their entirety by the surface owner;
- (b) The surface owner is neither engaged in the severance, extraction, processing, or leasing of mineral or other energy resources nor is he an affiliate of a person who engages in those activities; and
- (c) The surface is being used by the surface owner primarily for the purpose of raising for sale agricultural crops, including planted and managed timberland, of livestock or poultry.

For purposes of this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another individual, partnership, committee, association, corporation, or any other organization or group of persons.

The [REDACTED] must satisfy all three requirements set forth above in order that their unmined coal reserves not "be valued and assessed by the Department - - as a distinct interest in real property, separate and distinct from the surface real estate."

The reserves in question do not qualify for the exception to assessment by the Department set forth in KRS 132.820(1) and quoted above. These reserves have been leased by the [REDACTED] to [REDACTED], LLC and have been projected for mining by that lessee's mining plan.

The reserves in question must be assessed for ad valorem taxation at their fair cash value. Ky. Const. § 172; KRS 132.190(3); 132.820(1). The [REDACTED] based their claim of a fair cash value of \$ [REDACTED] upon their assertion of a "sale from [REDACTED] Corporation to [REDACTED] for \$ [REDACTED] per acre." The Department is not persuaded by this contention. The assessments in question are presumed to be valid and it is the taxpayers' 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). The [REDACTED] have not presented probative, persuasive evidence that would support or require reductions in these assessments.

For the reasons stated above, the assessments in question are correct and the ██████████ protest is hereby disallowed.

This letter is the final ruling of the Kentucky 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 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. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; 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,
FINANCE AND ADMINISTRATION CABINET


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue