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Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2014-33
August 22, 2014

Unmined Coal Ad Valorem Tax Assessment
for January 1, 2013

FINAL RULING

The Kentucky Department of Revenue ("DOR") currently has an outstanding unmined coal ad valorem tax assessment issued to [REDACTED] ("the Taxpayer") totaling \$ [REDACTED] for the 2013 tax year, for her 25% ownership in the property. Her information, as well as information regarding the entire parcel, is shown below. The chart below describes the assessment in question, which was made by the DOR pursuant to KRS 132.820.

Account Number	Parcel Identification	Owner and % of Ownership	DOR Value or Assessment	Estimated Tax Based on Value
[REDACTED]	[REDACTED]	[REDACTED] %	\$ [REDACTED]	\$ [REDACTED]

At issue is whether the DOR correctly assessed the fair cash value of the coal reserves in question. The Taxpayer has presented several arguments in its protest. First, the Taxpayer believes her assessment should be removed from the tax rolls because she does not own an amount of property equal to [REDACTED] acres and she has no agreement with the other owners to lease the property. Also, the Taxpayer argues that the property is not currently leased, is in a "low coal" area, and therefore is not mineable. The Taxpayer argues that the depth of the coal and costs of extraction of the seam make it highly unlikely that the coal will be mined. The Taxpayer

argues that the DOR has assessed a portion of the tax on both her and another taxpayer; namely, [REDACTED] (“[REDACTED]”). Lastly, the Taxpayer states that the assessment has increased in two years without justification, whereas the market has decreased. The Taxpayer presented the aforementioned arguments as evidence that the assessment should be lowered. Furthermore, the Taxpayer even goes as far as requesting that the coal seams in question should be excluded from the tax roll. However, the Taxpayer did not provide any documentation to support any of her arguments or assertions presented in her protest.

It is the DOR’s position that the Taxpayer has not submitted any persuasive evidence that would establish or indicate that the assessment referred to above does not represent the fair cash value of the unmined coal reserves in question as of the January 1, 2013 assessment date. The DOR disagrees that any of the listed arguments are persuasive and no additional documentation was provided to substantiate the Taxpayer’s arguments.

Based on the information available to DOR, the reserves that have been assessed consist of mineable and merchantable coal that is subject to ad valorem taxation and have been properly valued. Regarding the Taxpayer’s first argument, there is no requirement in Kentucky law that a taxpayer must own or have [REDACTED] acres or more in order for the property to be taxable. Regarding the argument that indicates the property is not currently leased, again, there is no requirement in Kentucky that a taxpayer must have the property leased before it can be taxed. There has been no documentation or information provided that establishes the Taxpayer’s claim that the cost of extraction and the depth of the seam would be cost-prohibitive in ever mining the property. Regarding the Taxpayer’s argument that the reserves in question are being subjected to double taxation, it has offered no proof to support this contention. The DOR’s records reflect that the Taxpayer is being properly assessed for only its interest in the reserves in question and not any interest that is being or should be assessed to someone else. Finally, the increased value of the unmined coal reserves was due to new information regarding drill hole data that was previously unknown. The information provided indicates that there is more coal than what was previously known in the parcel. When this information was reported to the DOR, the additional reserves were subsequently taxed in 2013 to the owners of the interests in the unmined coal reserves in question, one of whom is the Taxpayer.

Unmined coal reserves are assessed by the DOR pursuant to KRS 132.820(1), which states, in part:

The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances...

Ky. Const. § 172 states in part:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale...

The DOR's position is that the disputed unmined coal property has been properly valued at the fair cash value as required by law. See KRS 132.820(1); Ky. Const. § 172. 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. Houglan & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). The Taxpayer has not met this burden in the case of the assessment in question.

Therefore, the unmined coal ad valorem tax assessment is valid and correct and is hereby upheld.

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.

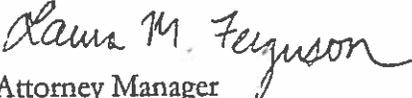
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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. 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,
FINANCE AND ADMINISTRATION CABINET


Attorney Manager
Office of Legal Services for Revenue

