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Secretary

THOMAS B. MILLER
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In the matter of:

██████████ AND ██████████

Contact: ██████████ and ██████████
██████████

FINAL RULING NO. 2012-12
February 15, 2012

Motor Vehicle Usage Tax Assessment

FINAL RULING

The Kentucky Department of Revenue ("Department") currently has an outstanding assessment of motor vehicle usage tax ("MVUT") against ██████████ and ██████████ ("the ██████████") totaling \$██████████ plus applicable penalty and interest that has accrued to date. A breakdown of this assessment as of the date of this final ruling is shown in the chart below:

Purchase Date	Tax Due	Interest as of 02/15/2012	Penalty as of 02/15/2012	Total Due as of 02/15/2012
██████████ 2006	\$██████████	\$██████████	\$██████████	\$██████████

The ██████████ reside at ██████████, ██████████, Kentucky, file Kentucky income tax returns and possess valid Kentucky driver's licenses. On ██████████ 2006, they purchased a 2006 Georgetown motor home from a dealership in ██████████. The ██████████ failed to register the motor home in Kentucky and failed to pay MVUT for the use of the motor home in Kentucky in accordance with KRS 138.460. Since the actual bill of sale could not be located, an assessment is based on the NADA retail value of \$██████████.



KRS 186.010(12) states that

“Resident” means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement. The possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima-facie evidence that the operator is a resident of Kentucky.

KRS 186.020(1) states in part that

Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with administrative regulations promulgated by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days.

KRS 138.460 (1) states that

A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.

KRS 138.460 (2) (B) states in part that for a used vehicle the tax is due upon “transfer of title....”

The [REDACTED] claim the dealership recommended they set up a limited liability company (“LLC”) for the sole purpose of avoiding Kentucky’s MVUT. Specifically, the LLC was set up solely to hold title to the motor home. The motor home was garaged in Kentucky and used by the [REDACTED] on Kentucky roadways. Therefore, the motor home should have been registered in Kentucky and the MVUT was due.

Even if the LLC was the transferee of the motor home, it is clear that the [REDACTED] have used the LLC as an alter ego or a mere instrumentality of themselves. Therefore, it is entirely appropriate and proper for the Department to “pierce the veil” of the LLC and impose liability for the MVUT directly upon the LLC’s members, the [REDACTED]. See e.g. White v. Winchester Land Dev. Corp. 584 S.W.2d 56 (Ky. App. 1979). Additionally, the transaction between the [REDACTED] and the LLC was a sham and should be disregarded so that the MVUT law may be properly applied. See e.g., Gregory v. Helvering 293 U.S. 465 (1935). Under the sham transaction doctrine, a transaction should be disregarded or treated as invalid when it has no legitimate or valid business purpose and has been consummated only for the purpose of evading

liability for taxes. The ██████████ readily acknowledge that they formed the LLC only to evade Kentucky's MVUT and not for any valid or legitimate purpose. Thus, it is a sham transaction and the ██████████ are liable for the MVUT.

The ██████████ have provided nothing in their defense other than the original letter of protest stating that they were following the advice of the dealer and believed that the procedure was legal.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because the ██████████ did not pay the MVUT in a timely manner. The ██████████ were and are Kentucky residents and the motor home was stored and used in Kentucky. They have attempted to evade their just tax liability by the scheme outlined above. Under these and the other circumstances presented by this matter, the penalty was properly applied and should not be waived or abated.

Therefore, the outstanding MVUT assessment in the amount of \$ ██████████ (plus applicable interest and penalty) is a legitimate liability of ██████████ and ██████████ 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 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.

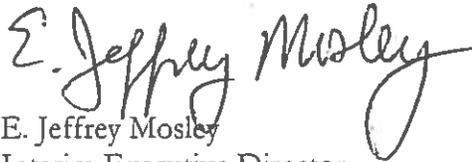
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

