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Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted] AND [redacted]

Contact: [redacted]

FINAL RULING NO. 2012-47
August 31, 2012

Motor Vehicle Usage Tax Assessment and Property
or Ad Valorem Tax Assessments
for 2007, 2008, 2009, 2010 and 2011

FINAL RULING

The Kentucky Department of Revenue ("the Department") has an outstanding motor vehicle usage ("MVUT") assessment for the tax year 2006 and motor vehicle property or ad valorem tax ("MOTAX") assessments against [redacted] for the tax years 2007, 2008, 2009, 2010 and 2011. These assessments relate to a 2007 Tuscany recreational vehicle ("the Tuscany"). The following schedule reflects the total underpayments of tax represented by these assessments, including applicable interest accrued to August 31, 2012:

Type Tax	Tax	Interest as of 8/31/12	Penalty	Total as of 8/31/12
Motor Vehicle Usage	$[redacted]	$[redacted]	$[redacted]	$[redacted]
TOTALS	$[redacted]	$[redacted]	$[redacted]	$[redacted]

Type Tax	Period	Tax Due	Interest as of 8/31/12	Penalty	Total as of 8/31/12
MOTAX	2007	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
MOTAX	2008	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
MOTAX	2009	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
MOTAX	2010	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
MOTAX	2011	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
TOTALS (MOTAX)	-	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
GRAND TOTAL (MOTAX and MVUT)	-	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]

[redacted] and [redacted] reside at [redacted], Kentucky. They are full year residents of Kentucky and possess valid Kentucky driver's licenses. On [redacted], 2006, they purchased the Tuscany from [redacted] in [redacted] for $[redacted]. [redacted] and [redacted] are listed as the purchasers on the purchaser order they executed with [redacted] on [redacted], 2006; the words "[redacted] LLC" are handwritten at the top of the agreement. In the Kentucky certificate of title, they are listed as owners along with [redacted] LLC and the loan and security agreement with [redacted] Credit Union financing the purchase of the Tuscany shows [redacted] and [redacted] as the borrowers and not [redacted] LLC.

KRS 138.460(1) states:

> 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) states:

> The tax shall be collected by the county clerk or other officer with whom the vehicle is requited to be titled or registered:
> (a) When the fee for titling and registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or
> (b) Upon the transfer of title or registration of any motor vehicle previously titled or registered in this state.

KRS 186.010(12) states:

> "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 or 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:

> 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 regulation 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. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides.

It is the position of [redacted] and [redacted] that while they maintain a permanent residence in Kentucky, they spend much of their time (up to half of the year) outside Kentucky on trips for varying lengths of time. They further contend that the Tuscany is owned by a [redacted] limited liability company ([redacted] LLC) and is thus properly registered in the state of [redacted] according to [redacted] law.

The arguments of [redacted] and [redacted] are without merit and are unsupported by any persuasive or valid evidence and legal authority. [redacted] and [redacted] are Kentucky residents and the documents described above show them as the owners of the Tuscany. Furthermore, while they have provided information showing that the Tuscany was used in a number of other states for varying periods of time, it is clear that this vehicle was indeed used in Kentucky and kept here when not on these trips. Accordingly, the Tuscany should have been registered in Kentucky and the MVUT paid by [redacted] and [redacted] within fifteen days of their purchase of this vehicle. KRS 138.460(1) and (2); 186.020(1).

For the tax years in question, the Tuscany had a tax situs in [redacted], Kentucky and thus was subject to MOTAX assessment. The permanent residence or domicile of its owners, [redacted] and [redacted], was in [redacted], Kentucky; this was also the Tuscany's permanent location, as it was here where it returned upon the completion of the various trips for which it was used by [redacted] and [redacted].

As noted above, [redacted] and [redacted] were the owners of the Tuscany. To the extent the documents referred to above would or might reflect that the Montana limited liability company [redacted] LLC was the owner of the Tuscany, they must be disregarded. The limited liability company is nothing more than an alter ego or instrumentality of [redacted] and [redacted]. It is therefore proper to "pierce the veil" of the limited liability company and impose liability for the MVUT and MOTAX upon the real owners of the Tuscany, [redacted] and [redacted]. See, e.g., Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC, 360 S.W.3d 152 (Ky. 2012). In addition, anything in the relevant documents purporting to vest ownership in the limited liability company would have no substance or purpose other than to evade taxation. See, e.g., Gregory v. Helvering, 293 U.S. 465 (1935). Thus, the transaction would have to be disregarded or treated as invalid or a sham. Id. Again, it should be noted that the relevant documents do not appear to divest [redacted] and [redacted] of ownership of the Tuscany.

Provisions of the property or ad valorem tax law require that all personal property, which includes motor vehicles, shall be listed for taxation and if, for any reason, it is not listed, then it may be assessed by the Department of Revenue as omitted property. See, e.g., KRS 132.190; 132.220; 132.290; 132.310 and 132.320. The Tuscany was unquestionably not listed for ad valorem taxation for the tax years 2007, 2008, 2009, 2010 and 2011 and thus has been properly assessed for these years as omitted property.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because [redacted] and [redacted] did not pay the MVUT in a timely manner. Penalties have also been assessed pursuant to KRS 132.290(4) because the Tuscany was not listed for ad valorem tax or MOTAX purposes by [redacted] and [redacted] for any of the tax years in question.

Based upon the foregoing, the MOTAX and MVUT tax assessments totaling $[redacted] (plus applicable interest and penalties) are legitimate liabilities of [redacted] and [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 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. Am 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

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cc: [redacted], Attorney At Law
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]