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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2013-44
July 26, 2013

Motor Vehicle Usage and Ad Valorem
Tax Assessments

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued to [REDACTED] a motor vehicle usage tax ("MVUT") assessment for the year 2006, and motor vehicle property or ad valorem tax ("MOTAX") assessments for the tax years 2007, 2008, 2009, 2010, 2011, and 2012. These assessments relate to a 2006 Damon Tuscany recreational vehicle ("the Tuscany") and have been protested by [REDACTED].

The following schedule provides a breakdown of these assessments, including penalties and applicable interest that has accrued to July 26, 2013 and will continue to accrue until the assessments are paid:

Type Tax	Period	Tax Doc. Purchase Date	Interest as of 07/26/13	Penalty	Total
MVUT	09/18/2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Type Tax	Period	Tax Due	Interest to 07/28/13	Penalty	Total
MOTAX	2007	██████████	██████████	██████████	██████████
MOTAX	2008	██████████	██████████	██████████	██████████
MOTAX	2009	██████████	██████████	██████████	██████████
MOTAX	2010	██████████	██████████	██████████	██████████
MOTAX	2011	██████████	██████████	██████████	██████████
MOTAX	2012	██████████	██████████	██████████	██████████
TOTALS (MOTAX)	-	██████████	██████████	██████████	██████████
GRAND TOTAL (MOTAX & MVUT)	-	██████████	██████████	██████████	██████████

It is undisputed that ██████████ was domiciled in Kentucky, residing at ██████████ ██████████, Kentucky, filed Kentucky income tax returns, and held a valid Kentucky driver's license during the relevant time period.

██████████ claims that the Tuscany, which was purchased in Kentucky, was owned by a ██████████ limited liability company, ██████████ ("the LLC") formed in 2006, and was therefore properly registered in ██████████ instead of Kentucky. However, sales records from the RV dealership show ██████████ as the purchaser of record.

██████████ stated that the LLC was formed for the purpose of promoting recreational vehicle leases to other business entities. Further, as with most new companies, he asserted, the credit and financial history of the business was nonexistent and thus could not obtain financing for the purchase of the Tuscany without his personal guarantee as a principal owner. ██████████ further asserts that he is within his rights to own and operate a business outside Kentucky and finance the vehicles purchased for the business.

Based upon the information provided or available, the LLC had no purpose other than to evade taxation and thus, its creation or existence should be disregarded as illusory or a sham. See, e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935); *Higgins v. Smith*, 308 U.S. 473 (1940). ██████████ is the real and true owner of the Tuscany.

The MVUT is to be "paid on the use in this state of every motor vehicle" and is due when that vehicle is first offered for titling or registration in this state or upon the transfer of title or registration of any motor vehicle previously titled or registered in this state. KRS 138.460(1) and (2). As ██████████ was a resident of the Commonwealth, was required to register the Tuscany he owned in Kentucky. See, KRS 186.020(1); 186.010(12); 186A.065. He is

therefore liable for MVUT due to his failure to register the Tuscany in Kentucky as required by law and to pay the MVUT that would have been due upon registration.

As noted above, MOTAX assessments have also been issued to [REDACTED] for 2007, 2008, 2009, 2010, 2011 and 2012. Based upon the foregoing, the Tuscany had a taxable situs in Kentucky during these years, as [REDACTED] was domiciled in Kentucky as of the relevant January 1, 2007 assessment date and the Tuscany had not acquired a permanent location in another state. See KRS 132.190(1) and (3); 132.220(1); Ky. Const. §§ 3, 170, 172, and 174; Simple v. Commonwealth, 181 Ky. 675, 205 S.W. 789 (1918); OAG 85-108; OAG 81-59. [REDACTED]'s failure to list or apply for a certificate of registration or title for the Tuscany rendered it omitted property and thus subject to ad valorem tax assessment as such by the Department. See KRS 132.290; 132.310; 132.320. No complaint has been made as to the fair cash value assigned to the Tuscany for the tax year 2007 by the assessment that has been made by the Department and is set forth above.

A penalty has been assessed pursuant to KRS 131.180(2) because [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 MOTAX purposes by [REDACTED] for any of the tax years in question. [REDACTED] has not offered anything that would show or suggest that these penalties were erroneously assessed or that [REDACTED] should be relieved of liability for these penalties.

The assessments referred to above are presumed to be valid and correct, with the burden resting upon [REDACTED] to prove otherwise. See, e.g., Revenue Cabinet v. Gillig, 957 S.W.2d 206, 209-10 (Ky. 1997); Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955).

Therefore, the outstanding MVUT and the MOTAX assessments in the amount of \$ [REDACTED] plus applicable interest and penalties are legitimate liabilities of [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. 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



