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Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2014-10
January 31, 2014

Motor Vehicle Usage Tax Assessment

FINAL RULING

The Kentucky Department of Revenue ("Department") currently has an outstanding motor vehicle usage tax ("MVUT") assessment against [REDACTED]. This assessment reflects tax of \$ [REDACTED] (plus applicable interest and penalty). A breakdown of the assessment is shown in the chart below:

Assessment Date	Tax Due	Interest as of 1/31/2014	Penalty as of 1/31/2014	Total Due 1/31/2014
6/25/2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] resides at [REDACTED], Kentucky. He is a full year resident of Kentucky and possesses a valid Kentucky driver's license. On [REDACTED], 2007, he and his wife, [REDACTED], purchased a used 2003 Alfa See Ya Motor Home from [REDACTED] in [REDACTED] for \$ [REDACTED]. [REDACTED] and his wife are listed as the purchasers on the purchase order they executed with [REDACTED] on [REDACTED], 2007. [REDACTED] issued him a temporary tag on the motor home. On [REDACTED], 2007, the motor home was titled and registered in [REDACTED] under the name, [REDACTED] LLC ("the LLC"). No documentation was provided to indicate why or when ownership of the motor home was transferred to the LLC, or if it was.

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 required 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] that he was not a resident of Kentucky when he formed the LLC in [REDACTED] because he sold his house in [REDACTED], Kentucky in order to purchase the motor home. However, [REDACTED] maintained his Kentucky residency both prior to and after the purchase of the motor home. He received the Kentucky homestead ad valorem exemption for his home in [REDACTED], maintained and still does maintain a Kentucky drivers license (which is valid through [REDACTED], 2015), and filed resident Kentucky tax returns at least through 2010. However, he contends that the motor home is owned by the LLC and was thus properly registered in [REDACTED] instead of in Kentucky.

[REDACTED] contends that he kept his Kentucky license due to the fact that he has a commercial driver's license ("CDL"), and some states require the operator of a 42 foot motor home to have a CDL. However, given that a CDL is a federal, and not state, requirement this argument is without merit as to the need to keep a Kentucky driver's license if you are not a Kentucky resident. A CDL, once earned, is valid and transferrable in and to any state of the union.

The arguments of [REDACTED] are without merit and are unsupported by any persuasive or valid evidence and legal authority. [REDACTED] is a Kentucky resident and the only two relevant documents submitted to the Department, the purchase order or contract and a personal check showing a monthly payment for the motor home, shows him as its owner. Accordingly, the motor home should have been registered in Kentucky and the MVUT paid by [REDACTED] within fifteen days of the purchase of this vehicle. KRS 138.460(1) and (2); 186.020(1).

As noted above, [REDACTED] was the owner of the motor home. To the extent the documents referred to above would or might reflect that the LLC was the owner of the motor home, they must be disregarded. The LLC is nothing more than an alter ego or instrumentality of [REDACTED]. It is therefore proper to "pierce the veil" of the limited liability company and impose liability for the MVUT upon the real owners of the motor home, [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] of ownership of the motor home.

The Department of Revenue has offered [REDACTED] the opportunity to meet with Department officials in letters dated [REDACTED], 2013, [REDACTED], 2013, [REDACTED], 2013 and [REDACTED], 2013 in an effort to resolve the issue in dispute. [REDACTED] has not responded to the last three requests.

A penalty of twenty percent (20%) was originally assessed in accordance with KRS 132.180, because [REDACTED] did not pay the MVUT in a timely manner. Under KRS 131.175, the Department has the authority to waive assessed penalties where it is shown to its satisfaction that the failure to file or pay timely is due to reasonable cause. [REDACTED] has not provided any proof that he meets the requirements needed to abate the penalties as outlined in 103 KAR 1:040.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(1) because [REDACTED] did not pay the MVUT in a timely manner.

Based upon the foregoing, the MVUT tax assessment totaling \$ [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.

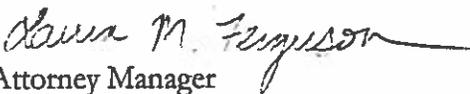
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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. 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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

