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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

Final Ruling No. 2010-04
February 19, 2010

FINAL RULING

The Kentucky Department of Revenue has issued withholding tax assessments against [REDACTED] for the taxable periods January 1, 2004 through December 31, 2007. The following table provides a breakdown of the amount due, all assessed fees and penalties as well as accrued interest as of this final ruling.

YEAR	TAX	INTEREST	PENALTY	TOTAL
2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue in this dispute is whether [REDACTED] properly withheld income taxes from the wages earned by its employees and remitted that payment to the Kentucky Department of Revenue for the periods in question.

It is the Department's position that after an examination of [REDACTED]'s records, it was revealed that [REDACTED] withheld Kentucky income tax from its employees for the 2004 and 2005 tax periods but did not pay over to the Department these withholdings as required by Kentucky law. Furthermore, [REDACTED] did not withhold any income taxes from its employees from wages earned during the 2006 and 2007 tax periods as required by Kentucky law.

KRS 141.310(1) provides:

Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.

KRS 141.330(1) provides:

Every employer required to deduct and withhold tax under KRS 141.310 and 141.315 shall, for the quarterly period beginning on the first day of January of each year, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make a return and report to the department the tax required to be withheld under KRS 141.310 and 141.315, unless the employer is permitted or required to report monthly or annually. Such employer shall, on or before the last day of the month following the close of each quarterly period, pay over to the department the tax required to be withheld under KRS 141.310 and 141.315; Provided, however, That the department may, by regulations, require employers to remit the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period or other period. A return shall be filed by every employer making payment of wages even though no tax has been withheld.

As a result of the examination described above, the Department of Revenue issued notices of tax due on [REDACTED], 2009. On [REDACTED], 2009, the department received a letter of protest dated [REDACTED], 2009 from [REDACTED], CPA of the firm of [REDACTED], PLLC. This letter represented a protest of the assessments and a request for an extension sixty (60) days to respond to the assessments with a supporting statement or further information. On [REDACTED], 2009, the Department granted the sixty (60) day extension. On [REDACTED], 2009, after not receiving any additional information from [REDACTED], another letter was sent requesting a supporting statement or further information and granting an additional thirty (30) days to respond. On [REDACTED], 2009 after not receiving any additional information from [REDACTED], a final letter was sent requesting a supporting statement or further information and granting an additional thirty (30) days to respond. A copy of this letter was also addressed to [REDACTED], a partner of [REDACTED]. As of this final ruling, no supporting statement or further information has been received.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

Interest on these past due taxes has been calculated in accordance with KRS 131.183(1). That statute provides:

All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate. The tax interest rate for tax liabilities that are assessed on or after July 1, 1982, shall be sixteen percent (16%). This tax interest rate shall apply until January 1, 1983, when the tax interest rate shall be adjusted as provided in this section. The commissioner of revenue shall adjust the tax interest rate not later than November 15 of any year, beginning in 1982, if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year.

Applicable penalties on these past due taxes have been calculated in accordance with KRS 131.180. That statute provides:

Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).

After reviewing the available information and applicable statutes, it is the position of the Department of Revenue that the outstanding withholding tax assessments issued against [REDACTED] for the January 1, 2004 through December 31, 2007 tax periods are valid liabilities due to 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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED