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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted]

Contact: [redacted]

FINAL RULING NO. 2012-46
October 16, 2012

Individual Income Tax Assessment
for Taxable Year 2003 and 2005

FINAL RULING

The Kentucky Department of Revenue (the "Department") has issued individual income tax assessments against [redacted] for the taxable years 2003 and 2005. The following schedule reflects these assessments, including applicable interest and penalty accrued to date, which remain outstanding.

Taxable Years	Tax	Interest as of 10/16/2012	Penalty & Fees	Total per period
2003	$[redacted]	$[redacted]	$[redacted]	$[redacted]
2005	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Total	$[redacted]	$[redacted]	$[redacted]	$[redacted]

The assessments resulted from [redacted]'s failure to file Kentucky Individual Income Tax returns, Revenue Form 740, for the 2003 and 2005 tax years and to pay the tax due for those years as required by KRS 141.020. The records of the Kentucky Department of Revenue disclose that [redacted] was a Kentucky resident with a Kentucky Drivers License and a Kentucky address. [redacted]'s Kentucky net income for 2005 and 2006 is based on information obtained from the Internal Revenue Service ("IRS") under the authority

of Section 6103(d) of the Internal Revenue Code. [redacted]'s Kentucky income tax liability was estimated pursuant to KRS 131.180 (4).

[redacted] protested and stated that she was a [redacted] resident but not a Kentucky resident. However, [redacted] did not provide sufficient supporting documentation to prove her residency.

At issue is whether the information obtained from the Internal Revenue Service for the 2003 and 2005 tax years is evidence of taxable income and also whether Kentucky law requires a person who is a resident of this state to pay individual income taxes on such income.

KRS 141.020(1) states that "an annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income." "Net income" is gross income with certain adjustments and minus allowable deductions. See KRS 141.010(10) and (11). While Kentucky adopts certain federal definitions, its power to tax its residents is found in its own constitutional and statutory authority.

KRS 141.010(17) defines a "resident" as including an individual domiciled within this state. [redacted] has a valid Kentucky driver's license and a Kentucky address and has been registered to vote in Kentucky since 1983. Therefore, [redacted] is a Kentucky resident and subject to Kentucky income tax.

For Kentucky income tax purposes, "gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code (26 U.S.C. §61). See KRS 141.010(9). Under 26 U.S.C. §61(a), "gross income" means all income from whatever source derived and includes compensation for services. Further, 26 C.F.R. §1.1-1(b) provides that "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States."

In addition, [redacted] has not met the supporting statement requirement of KRS 131.110(1) with respect to provide sufficient supporting documentation to prove her residency. The Kentucky courts have held that KRS 131.110 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, 698 S.W.2d 528, 530 (Ky. App. 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.

The courts have held that this statutory provision (KRS 131.110(1)) is "mandatory in nature" and that failure to submit documentation as it requires will result in the taxpayer's loss of the right to further review of the assessment or refund denial in question. Scotty's Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky. App. 1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

For each period, [redacted] was assessed penalties in accordance with KRS 131.180 (2) and (4). Because [redacted] failed to timely pay the taxes owed, the late pay penalty is a valid penalty assessment in accordance with KRS 131.180 (2), which states:

> (2) 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).

Because [redacted] failed to file returns, the did not file/amnesty penalty is a valid penalty assessment in accordance with KRS 131.180 (4), which states:

> (4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars ($100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as

> defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.

[redacted] failed to demonstrate why these penalties should not apply or that these penalties should be waived for reasonable cause.

Therefore, based upon the available information, and the applicable statutes, the outstanding tax, interest and penalty issued against [redacted] for the taxable years 2003 and 2005 are valid liabilities due the Commonwealth of Kentucky. [redacted]'s protest is hereby denied.

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

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

cc: [redacted]
Attn: [redacted]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED