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LORI HUDSON FLANERY
Secretary

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Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2014-11
January 31, 2014

Unmined Coal Ad Valorem Tax Assessments
for January 1, 2013

FINAL RULING

The Kentucky Department of Revenue ("DOR") currently has outstanding ad valorem tax assessments issued to [REDACTED] ("the Taxpayer") for the 2013 tax year fixing the total value of unmined coal reserves owned by the Taxpayer at \$[REDACTED]. The chart below describes the assessments in question, which were made by the DOR pursuant to KRS 132.820:

Account Number	Parcel Identification	County	DOR Assessment or Value	Estimated Tax Based on DOR's Value	Taxpayer's Proposed Value
[REDACTED]	[REDACTED]	[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

At issue is whether the DOR correctly assessed the fair cash value of the coal reserves in question. The Taxpayer's protest makes several arguments. First, the Taxpayer argues that the property is not currently leased and the leases he has been offered have not had sufficiently favorable terms for him to accept; accordingly, he asserts that the values of the reserves fixed by the assessments should be reduced. He also argues that "[a]ny coal can be mined, but it has to be able to be 'profitably' mined before it can be considered 'mineable' from a taxation or mining sense" and thus, the value of his reserves should be reduced because they cannot be profitably

mined at this point in time. Additionally, the Taxpayer included a chart of purported core hole extractions from his property, which he asserts proves that the coal on his property is thin, varies greatly, and pinches down to zero thickness, making it unmineable. The Taxpayer presented these arguments as evidence that his assessment should be lowered. However, the Taxpayer did not provide any relevant documentation to support any of his arguments or assertions presented in his protest.

It is the DOR's position that the Taxpayer has not submitted any persuasive evidence that would establish or indicate that the assessments referred to above do not represent the fair cash value of the unmined coal reserves in question as of the January 1, 2013 assessment date. No additional verifiable documentation has been provided by the Taxpayer to substantiate his arguments.

Based on the information available to the DOR, the reserves that have been assessed consist of mineable and merchantable coal reserves that are subject to ad valorem taxation and have been properly assessed at this fair cash value. There is no requirement in Kentucky law that the reserves must be leased before they can be subject to ad valorem taxation. There has been no documentation or information provided by the Taxpayer that establishes the Taxpayer's claim that the cost of extraction and the depth of the seam would prohibit the reserves in question from ever being mined.

Additionally, the chart submitted by the Taxpayer did not prove his argument. The DOR has determined that the chart is a seam correlation chart, not a core hole chart. There is a core hole on the chart marked "██████" which the Taxpayer states relates to this matter. However, the DOR has no record of "██████." The DOR requested that the Taxpayer provide the actual core hole logs for the data contained in the chart, because the information which was basis of the chart (i.e., the back-up information) was not provided. Therefore, the DOR cannot ascertain where the holes were taken, if they were indeed taken on the property, or even if they were taken in Kentucky. The Taxpayer did not have this information. He asserted that this information should be on file with the Commonwealth of Kentucky because the Kentucky Department of Highways performed the core hole reporting. The DOR contacted numerous Kentucky and ████████ agencies, both public and private, in an attempt to verify the information provided by the Taxpayer. However, the information could not be verified through these sources and therefore, cannot suffice as valid or persuasive evidence that would warrant or support reductions in the assessments in question.

Unmined coal reserves are assessed by the DOR pursuant to KRS 132.820(1), which states, in part:

The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances...

Ky. Const. § 172 states in part:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale...

The DOR's position is that the unmined coal reserves in question have been properly assessed at fair cash value as required by law. See also KRS 132.820(1). The assessments in question are presumed to be valid and it is the Taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). The Taxpayer has not met this burden in the case of the assessment in question.

Therefore, the unmined coal ad valorem tax assessments described above are valid and correct and are hereby upheld.

This letter is the final ruling of the Kentucky 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.

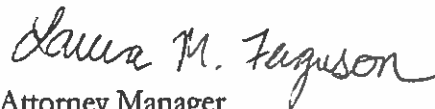
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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

