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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2013-57
October 23, 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, and 2009. These assessments relate to a 2005 Damon Astoria recreational vehicle ("the Astoria") and have been protested by [REDACTED]

The following schedule provides a breakdown of these assessments, including penalties and applicable interest that has accrued to October 23, 2013 and will continue to accrue until the assessments are paid:

Type Tax	Period	Tax Due: Purchase Date	Interest as of 10/23/2013	Penalty	Total
MVUT	02/17/2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Type Tax	Period	Tax Due	Interest to 10/23/2013	Penalty	Total
MOTAX	2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOTAX	2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOTAX	2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTALS (MOTAX)	-	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
GRAND TOTAL (MOTAX & MVUT)	-	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

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

[REDACTED] claims that the Astoria, which was purchased in Kentucky, was owned by a [REDACTED] limited liability company, [REDACTED] LLC ("the LLC") formed in 2006 and was therefore properly registered in [REDACTED] instead of Kentucky. In addition, [REDACTED] stated that he returned the 2005 Astoria within sixty days of the purchase and exchanged it for a 2006 recreational vehicle. However, [REDACTED] has no supportive documentation proving that the Astoria was returned within that timeframe to take advantage of the return credit provided in KRS 138.460(9). In fact, in the civil action he filed in Jefferson Circuit Court against the dealership, [REDACTED] is on record stating the 2005 Astoria purchased [REDACTED] [REDACTED], 2006 was not returned to the dealership until [REDACTED] of that year while he continued to make payments under the terms of the sales contract until [REDACTED] 2007. [REDACTED] has paid the tax on the 2006 motor vehicle pursuant to the tax amnesty program conducted in 2012 in accordance with KRS 131.410 to 131.445.

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). [REDACTED] is the real and true owner of the Astoria.

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 [REDACTED] was a resident of the Commonwealth, was required to register the Astoria 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 Astoria 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, and 2009. Based upon the foregoing, the Astoria 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 Astoria 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; Sample 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 Astoria 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 Astoria by the Department for the each of the three tax years.

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 Astoria 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). [REDACTED] has not established that the assessments in question are invalid or incorrect.

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. 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
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