STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted]

Contact: [redacted]

FINAL RULING NO. 2014-25
July 23, 2014

Motor Vehicle Usage and Ad Valorem
Tax Assessments

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued a motor vehicle usage tax ("MVUT") assessment for the year 2007, and motor vehicle property or ad valorem tax ("MOTAX") assessments for the tax years 2008 through 2012 to [redacted] The assessments relate to a 2006 Ford F-250 and have been protested by [redacted].

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

Type Tax	Period	Tax Due	Interest as of 07/23/2014	Penalty	Total Due
MVUT	5/27/07	$[redacted]	$[redacted]	$[redacted]	$[redacted]
MOTAX	2008	$[redacted]	$[redacted]	$[redacted]	$[redacted]
MOTAX	2009	$[redacted]	$[redacted]	$[redacted]	$[redacted]
MOTAX	2010	$[redacted]	$[redacted]	$[redacted]	$[redacted]
MOTAX	2011	$[redacted]	$[redacted]	$[redacted]	$[redacted]
MOTAX	2012	$[redacted]	$[redacted]	$[redacted]	$[redacted]
TOTALS (MOTAX)		$[redacted]	$[redacted]	$[redacted]	$[redacted]

GRAND TOTAL (MOTAX & MVUT)		$[redacted]	$[redacted]	$[redacted]	$[redacted]

The assessments in question resulted from a report or tip to the Department's Freeroader Program. [redacted] asserts that she has been a resident of [redacted], [redacted] for several years and licensed or registered her motor vehicles in [redacted]. She acknowledges that she has filed Kentucky resident income tax returns with her husband for the years in question but claims that this was her tax preparer's error and has since submitted amended returns for those years that claim non-resident status.

The Department's records indicate that [redacted] was issued a Kentucky driver's license on [redacted], 2007 at the Kentucky address of [redacted], Kentucky. This driver's license expired on [redacted], 2011. This address is where her son resides. [redacted] and her husband stay with their son frequently due to her husband's becoming disabled as of [redacted], 2011 and his difficulty driving as a result of that disability. [redacted] use the [redacted], Kentucky residence as a mailing address.

The Department's records also indicate that [redacted] was registered to vote in the Commonwealth of Kentucky and did in fact vote in Kentucky elections in [redacted] and [redacted], 2007; [redacted] and [redacted], 2008; and [redacted] and [redacted], 2010. In doing so, she in effect represented and admitted that she was a Kentucky resident or domiciled in Kentucky during these years. See Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58, 62-63, 66 (1946); Wheeler v. Burgess, 263 Ky. 693, 93 S.W.2d 351, 354-55 (1936). See also KRS 116.025; 116.035; 116.045.

"Residence" for purposes of Kentucky motor vehicle registration is defined in KRS 186.010(12) as follows:

> "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 of a valid Kentucky operator's license shall be prima-faire evidence that the operator is a resident of Kentucky.

See also KRS 186.020(1). In light of her actual residence in [redacted] Kentucky, her holding a Kentucky driver's license, her voting in Kentucky, and her filing of Kentucky resident income tax returns, [redacted] was a resident of or domiciled in Kentucky during the years for which the MOTAX and MVUT assessments have been made.

As a Kentucky resident, she was required to register her 2006 Ford F-250 in Kentucky in 2007. See KRS 138.460(1) and (2); 186.010(12); 186.020(1); 186A.065. Had she properly registered this vehicle during the period for which MOTAX and MVUT assessments described above have been made, the MOTAX would have been properly collected by the county clerk. See KRS 134.800 to 134.820; 132; 132.485; 132.487.

As noted above, MOTAX assessments have also been issued to [redacted] for 2008 through 2012. Based upon the foregoing, the Ford F-250 had a taxable situs in Kentucky during these years. [redacted] failure to list or obtain a Kentucky registration and title for the Ford F-250 rendered it omitted property and subject to ad valorem tax assessment as such by the Department. See, KRS 132.290; 132.310; and 132.320.

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 Ford F-250 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 from these penalties.

The MVUT and MOTAX assessments 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, 209-210 (Ky. 1997); Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955). [redacted] has failed to do so.

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 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 appeal before the Board is governed by the following rules set forth on 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 these 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 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

Doug Dowell

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [redacted], Attorney
[redacted]