



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. 2015-28
June 26, 2015

Motor Vehicle Usage
Tax Assessments
For the periods January 1, 2009 and March 21, 2008

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued motor vehicle usage tax ("MVUT") assessments to [REDACTED] for a 2005 Fleetwood Discovery Motor Home ("the RV") (VIN: [REDACTED]) and for a 2006 Ford 350 ("the truck") (VIN: [REDACTED]). The assessments have been protested by [REDACTED].

The following schedule provides a breakdown of these assessments, including penalties and applicable interest that have 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 06/26/2015	Penalty	Total Due
MVUT-Truck	1/1/2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MVUT-RV	3/21/2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The assessments in question relate to vehicles that [REDACTED] a Kentucky resident, purchased; however, [REDACTED] did not register or title the vehicles in the state of Kentucky within 15 days, as required by law.

It is the taxpayer's position that the vehicles were properly registered by [REDACTED] LLC, a [REDACTED] LLC, in [REDACTED], and are not subject to the Kentucky motor vehicle usage tax. The Department disagrees.

KRS 186.020(1) stated in part:

Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with administrative regulations promulgated by the Cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application of registration within fifteen (15) days.

KRS 138.460(1) states in part:

A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.

[REDACTED] purchased the RV in Kentucky and wrote two personal checks on [REDACTED] 2008 for the RV. Therefore, he was the owner of the RV on [REDACTED] 2008. [REDACTED] LLC was not incorporated until [REDACTED] 2008 in the state of [REDACTED]. [REDACTED] LLC could not have purchased the RV because its incorporation occurred nearly a month after the purchase of the RV. Thus, [REDACTED] purchased the RV in his individual capacity and he is personally liable for the MVUT on the RV.

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). Even assuming, *arguendo*, that the LLC was the owner of the vehicle in question, then the doctrine of “piercing the veil” would apply. See *White v. Winchester Land Dev. Corp.*, 584 S.W.2d 56 (1979) overruled on other grounds by *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC* 360 S.W.3d 152, 165 (2012). In either case, [REDACTED] was the real and true owner of the vehicles.

Regarding the truck, [REDACTED] has argued that it was never in the state; therefore, Kentucky tax should not apply. However, records show that the vehicle was located in [REDACTED] Kentucky for maintenance both prior to and after its sale to [REDACTED]. In addition, as a

Kentucky resident, ██████████ took the truck in partial trade for the RV. ██████████, not ██████████ LLC, represented that he owned the RV and agreed to accept the truck in trade for the RV. The truck title was signed and witnessed in Kentucky. During a conference with the Department, ██████████ indicated that he still owns the truck and uses it to travel between his many businesses. Therefore, ██████████ has been properly assessed the tax on the truck.

The Department's records indicate that ██████████ was a Kentucky resident in the tax years at issue. ██████████ possessed a valid Kentucky drivers license during the years at issue. Moreover, ██████████ filed individual income tax returns in Kentucky during those years.

"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). ██████████ was a resident of or domiciled in Kentucky prior, during, and after the transactions for which the MVUT assessments have been made. ██████████'s counsel acknowledged that ██████████ was a Kentucky resident throughout the periods in question.

As a Kentucky resident, ██████████ was required to register his RV and truck at the time of the purchases. See KRS 138.460(1) and (2); 186.010(12); 186.020(1); 186A.065. Had he properly registered these vehicles, the MVUT would have been properly collected by the county clerk. See KRS 134.800 to 134.820; 132; 132.485; 132.487.

Penalties have been assessed pursuant to KRS 131.180(2) because ██████████ did not pay the MVUT in a timely manner. ██████████ has not offered anything that would show or suggest that these penalties were erroneously assessed or that he should be relieved of liability from these penalties.

The MVUT assessments are presumed to be valid and correct, with the burden resting upon ██████████ 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). ██████████ has failed to do so.

Therefore, the outstanding MVUT 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 (the "Board") 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,

DEPARTMENT OF REVENUE



Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [REDACTED] Law Office
[REDACTED]