



**MATTHEW G. BEVIN**  
Governor

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**WILLIAM M. LANDRUM III**  
Secretary

**DANIEL P. BORK**  
Commissioner

In the matter of:

██████████, LLC

Contact: ██████████ LLC

██████████  
██████████

FINAL RULING NO. 2016-19  
May 13, 2016

Motor Vehicle Usage Tax Assessment:  
January 2, 2007 Assessment Date  
and  
Motor Vehicle Property Tax Assessment:  
2008-2015 Tax Years (Assessment Dates of January 1, 2007-January 1, 2015)

### FINAL RULING

The Kentucky Department of Revenue ("the Department") currently has an outstanding Motor Vehicle Usage Tax ("MVUT") assessment against ██████████, LLC ("the Taxpayer") in the amount of \$██████████, plus applicable interest and penalty, for the 2007 tax year. The Department also has outstanding Motor Vehicle Property ("MOTAX") Tax assessments against the Taxpayer in the amount of \$██████████, plus applicable interest and penalty, for the 2008-2015 tax years. The vehicle assessed is a 2007 Valencia Coach Motor Home, identified by VIN number ██████████. A breakdown of the assessments is shown in the chart on the next page.

Assessment Date	Notice Number	Type Tax	Tax Amount	Penalties as of 5/13/16	Interest as of 5/13/16	Total Due as of 5/13/16
January 2, 2007	██████████	MVUT	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2015		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2014		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2013		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2012		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2011		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2010		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2009		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2008		MOTAX	\$██████████	\$██████████	\$██████████	\$██████████
Total	MOTAX		\$██████████	\$██████████	\$██████████	\$██████████

██████████ and ██████████ were the only members of the taxpayer and they were both Kentucky residents throughout the period at issue. Both maintained their residence in Kentucky, possessed valid Kentucky drivers' licenses, and filed individual income tax returns in Kentucky throughout the period at issue. Moreover, they were both registered to vote in Kentucky during the period at issue.

The taxpayer was allegedly incorporated in the state of ██████████ effective ██████████, 2006. The RV was purportedly contributed to the taxpayer on that date. However, the actual purchase of the RV apparently did not take place until ██████████, 2006.

The taxpayer's principal place of business, and thus its commercial domicile, was within the state of Kentucky. The taxpayer does not and has not maintained a physical office at any of the ██████████ addresses that it has provided to the Department. The taxpayer has failed to provide the Department with any information that would prove that its actual principal place of business is anywhere other than the residence of its two members, ██████████ and ██████████, both of whom resided within the state of Kentucky throughout the relevant time periods. Thus, it is the Department's conclusion that the taxpayer's commercial domicile is within the state of Kentucky. See *Inter-Southern Life Insurance Co. v. Milliken*, 149 S.W. 875 (1912); KRS 141.120(1)(b); OAG 84-130.

The MVUT is to be “paid on the use in this state of every motor vehicle” and is to be collected by the county clerk 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 the taxpayer’s commercial domicile was located in the state of Kentucky, it was required to register the RV in Kentucky. See, KRS 186.020(1); 186A.065.

As noted above, MOTAX assessments have also been issued to the taxpayer. Based upon the foregoing, the RV had a taxable situs in Kentucky during the years at issue, as the taxpayer was domiciled in Kentucky as of the relevant assessment dates and the RV 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; Seiple v. Commonwealth, 181 Ky. 675, 205 S.W. 789 (1918); OAG 85-108; OAG 81-59. Even assuming arguendo that the taxpayer’s domicile was not within the state of Kentucky, the RV would still be taxable within the state of Kentucky as the RV was situated here. Id; Reeves v. Island Creek Fuel & Transportation Co., 230 S.W.2d 924 (1950).

The taxpayer’s failure to list or apply for a certificate of registration or title for the RV 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.

A penalty has been assessed pursuant to KRS 131.180(2) because the taxpayer did not pay the MVUT in a timely manner. Penalties have also been assessed pursuant to KRS 132.290(4) because the RV was not listed for MOTAX purposes by the taxpayer for any of the tax years in question. The taxpayer has not offered anything that would show or suggest that these penalties were erroneously assessed or that it 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 the taxpayer 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).

Therefore, the outstanding MVUT assessment totaling \$██████████ (plus applicable interest and penalty) and the MOTAX assessments totaling \$██████████ (plus applicable interest and penalties) are legitimate liabilities of the taxpayer 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.

██████████, LLC

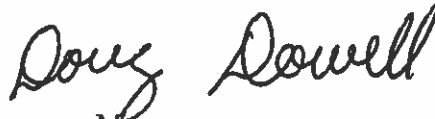
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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

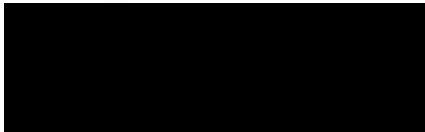
DEPARTMENT OF REVENUE



Attorney Manager

Office of Legal Services for Revenue

cc:



CERTIFIED MAIL

RETURN RECEIPT REQUESTED