

EXPEDITED PROTEST RESOLUTION (EPR) – Q & A's

This document provides the law and some questions and answers that relate to the expedited protest resolution program that was enacted by the 2010 Extraordinary Session of the General Assembly in House Bill 2 and signed into law by Governor Beshear on June 4, 2010.

Law

“Notwithstanding KRS 131.175, 131.180, 131.183, and any other law to the contrary, any tax assessment that, as of January 19, 2010, has: (1) Been protested pursuant to KRS 131.110(1); (2) Not been the subject of a final ruling issued pursuant to KRS 131.110(3); and (3) Not been subject to the provisions of KRS 44.030, 131.500, 131.515, 135.050, or 141.310(14), shall be considered satisfied and paid in full if the taxpayer pays the entire amount of the tax assessed, exclusive of interest and penalties, on or after the effective date of this Act and before July 31, 2010. Any payment of tax made pursuant to this section shall be final and irrevocable and not subject to refund or recovery in the future.”

Questions and Answers

1. **Facts:** On June 5, 2010, a taxpayer paid some tax bills in full, including penalty and interest. These bills met the qualifications for the EPR program. **Question:** Is the taxpayer eligible for a refund of the penalty and interest paid? **Answer:** If the taxpayer submits a written request for a refund of the penalty and interest within four years from the date of payment, the DOR will refund the penalty and interest paid.

2. **Facts:**
 - A. Tax was originally assessed sometime during 2009 in the amount of \$50,000.
 - B. The assessment was protested prior to January 19, 2010.
 - C. The taxpayer agreed to pay \$20,000 of the total amount assessed and sent the payment prior to June 4, 2010.
 - D. The \$20,000 check was processed towards the amount of tax owed.
 - E. The remaining tax due after the \$20,000 payment, exclusive of penalty and interest is \$30,000.
 - F. The total penalty and interest due is calculated based on a tax liability of \$50,000.

Question: Is the total penalty and interest eligible for abatement under the EPR program? **Answer:** No. The penalty and interest related to the remaining tax due of \$30,000 is eligible for abatement provided the \$30,000 of remaining tax due is paid prior to July 31, 2010. A recomputed penalty and interest amount will be provided to the taxpayer. The \$20,000 payment cannot be considered under the EPR program because only payments of tax made on or after June 4, 2010 and before July 31, 2010 are eligible.

3. **Facts:** A taxpayer with an assessment under protest prior to 1/19/10 offers to pay a percent of the tax due. **Question:** Can the Department accept a settlement offer based on less than 100% of the tax due under the EPR program? **Answer:** No. Settlement

offers will not be considered under the EPR program. 100% of the tax must be paid and all other requirements of the enabling legislation must be met for a protest to be eligible under the EPR program. However, the taxpayer in this case still can make a settlement offer which the Department will consider under the authority to settle tax controversies provided by KRS 131.010(3).

- 4. Facts:** A taxpayer provides documentation with their timely protest in support of their assertion that the amount of the assessment should be reduced. The Department agrees with the supporting documentation. **Question:** Can the Department make adjustments to the protested assessment and the assessment still be considered to be eligible under the EPR program? **Answer:** Yes. The Department can make a correction to the amount of tax assessed to correct errors in billings. However, the correction process is non-negotiable and the tax bills in question must otherwise meet the EPR requirements.
- 5. Facts:** Timely protested tax bills are being held in abeyance pending the outcome of a court case. **Question:** Are protested bills being held in abeyance eligible for the EPR program? **Answer:** Yes, provided all other requirements of the enabling legislation for EPR are met. Please note that any payment of the tax due made under the EPR program is final and irrevocable. If a subsequent court ruling on the relevant issues is in the taxpayer's favor, a refund will not be issued because the amount paid under the EPR program is final.
- 6. Facts:** A taxpayer protested only the penalty and interest on a tax bill. The taxpayer did not protest and has not paid the tax due. **Question:** Is the tax bill eligible for the EPR program? **Answer:** No. The tax was not protested under the provisions of KRS 131.110 and the bill is therefore not eligible.
- 7. Facts:** Prior to January 19, 2010, a taxpayer timely protested the tax, penalty and interest due on a tax bill. The taxpayer paid the amount of tax due on the bill before June 4, 2010. The taxpayer continues to protest the penalty and interest. **Question:** Is the taxpayer eligible under the EPR program for waiver of the penalty and interest? **Answer:** No. Penalty and interest can only be waived under the EPR program for amounts associated with protested tax paid on or after June 4, 2010 and before July 31, 2010.
- 8. Facts:** A taxpayer calls after the expiration of the EPR program and states that he moved and did not receive the DOR notice letter about the program until after July 30, 2010. **Question:** Is the taxpayer's protest eligible for the EPR program? **Answer:** No. The enacted legislation is clear that payment of 100% of the tax must be made prior to July 31, 2010 in order to be eligible for the EPR program. While the Department is not required to do so, it is being very diligent about identifying those tax bills that are eligible for the program and is sending the notice letter to the most recent addresses we

have for the impacted taxpayers. The Department will continue to post information on our website about the program in an effort to reach every eligible taxpayer.

- 9. Facts:** A taxpayer has multiple tax bills for multiple tax types and periods. **Question:** Does each period for each tax type stand on its own for purposes of determining eligibility under the EPR program? **Answer:** Yes, each period stands on its own.
- 10. Facts:** A taxpayer has multiple tax bills for multiple tax types and periods that meet the statutory criteria of the EPR program. **Question:** Can the taxpayer elect to participate in the EPR program for some tax bills and not others? **Answer:** Yes. The taxpayer may choose to pay 100% of the tax for some of the bills under the EPR program and continue pursuit of their protest rights on the remaining liabilities. The tax due on the bills paid under the EPR program will be final and irrevocable and not subject to further protest.
- 11. Facts:** A taxpayer has tax bills for a particular tax type that they protested as of January 19, 2010. Subsequently, they protested other tax bills for the same tax type after 1/19/10. **Question:** Are all of the bills eligible for the EPR program? **Answer:** No. Only the bills protested under the provisions of KRS 131.110 as of 1/19/10 are eligible.