

MATTHEW G. BEVIN 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 WILLIAM M. LANDRUM III Secretary

> DANIEL P. BORK Commissioner

In the matter of:

| | | , LLC | | |
|----------|----------------|---|--|--|
| Contact: | , LLP ATTN: | FINAL RULING NO. 2015-55 December 18, 2015 | | |

Assessment of Corporation Income Tax for the Tax Year Ended September 28, 2013

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued a corporation income tax assessment against second to the second secon

| TAXYEAR | TAX | INTEREST | PENALTIES | TOTAL |
|-------------------------------|-----|----------|-----------|-------|
| FY from Sept 2012 – Sept 2013 | \$ | \$ | \$ | \$ |
| TOTAL | \$ | \$ | \$ | \$ |

At issue in this dispute is whether the Taxpayer failed to report related expenses to nontaxable income, specifically, the dividend income in accordance with KRS 141.010(13)(d)(4). KRS 141.010(13)(d)(4) provides:

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus:



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December 18, 2015 – Final Ruling No. 2015-55 Page 2

> (d) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except:

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4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once.

103 KAR 16:060(7) provides guidance on the methods which may be used in determining the related expense adjustment. Since the amount of actual expenses is unknown, the Department utilized the method prescribed in Section 7(e) of 103 KAR 16:060, a flat percentage of the nontaxable income, in order to estimate the appropriate related expense adjustment. The Department has calculated the appropriate related expense adjustment by multiplying the amount of non-taxable dividend income reported on the return by five (5) percent.

The Taxpayer argues that the dividend income included in the taxable income for federal purposes is pursuant to IRC § 952 (Subpart F Income) and IRC § 78 (Foreign Dividend Gross Up). The Taxpayer also states that the income was derived from interest earned on a lawsuit settlement that occurred in **Example** and that no expenditures for the legal proceedings were deducted. However, the Taxpayer has deducted various expenses that could be related, directly or indirectly, to the non-taxable dividend income; therefore, a related expense adjustment must be included in determining the Taxpayer's taxable income.

It is the Department's position that since the Taxpayer's income received from the settlement is considered to be dividend income, which is not taxable for Kentucky, the income is subject to a related expense adjustment to add back deductions attributable to non-taxable income. See KRS 141.010(12)(b); KRS 141.010(11)(f); 103 KAR 16:060 § 7.

The Taxpayer has provided no additional information in support of its claim nor has it suggested another method in the Regulation. It is therefore the Department's position that the related expense adjustment for tax year ended **constraints**, 2013, is valid.

For the tax year ended 2013, the Department has assessed interest that will accrue until the tax is paid. See KRS 141.220; 141.985; 131.183; 103 KAR 15:050 § 4.

After reviewing the available information, and the applicable statutes, it is the position of the Department that the outstanding corporation income tax assessment issued against

, LLC for tax year ended , 2013, is valid.

December 18, 2015 – Final Ruling No. 2015-55 Page 3

This letter is the final ruling of the Department of Revenue.

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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, using the 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.

December 18, 2015 – Final Ruling No. 2015-55 Page 4

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

Sincerely,

, LLC

DEPARTMENT OF REVENUE

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Attorney Mandger Office of Legal Services for Revenue

CERTIFIED MAIL RETURN RECEIPT REQUESTED

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