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Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted] Corporation

Contact: [redacted] CPA
[redacted]

FINAL RULING NO. 2014-40
October 31, 2014

Denial of Corporation License Tax Refund Claim for
Tax Period Ended December 31, 1999

FINAL RULING

The Kentucky Finance and Administration Cabinet, Department of Revenue (successor to the Kentucky Revenue Cabinet; the "Department") has received a refund request for the above named taxpayer for the above cited tax period.

Year	Requested Refund
1999	$[redacted]

On December 28, 2001, [redacted] Corporation (hereafter "[redacted]") timely filed an amended corporation license tax return for the December 31, 1999 tax year seeking a refund of $[redacted].

Three issues were presented by this refund request. The first issue is in regard to the Department's disallowing the deduction for monies borrowed to finance inventory. The second issue is in regard to the inclusion of post-employment retirement benefits to capital employed as defined in KRS 136.070. The third issue is in regard to the Department's disallowing the deduction for investments in subsidiaries pursuant to KRS 136.071. The portion of the refund claim related to the first two issues is $[redacted]. The portion of the refund related to the third issue is $[redacted].

Regarding the first two issues, [redacted] had previously litigated these same issues for the tax periods ending [redacted]. In that litigation, the Kentucky Board of Tax Appeals in its order No. [redacted], dated [redacted] (the "KBTA Order") ruled in favor of the Department that [redacted] was not entitled to a deduction for monies borrowed to finance inventory and that the adjustment to include post-employment retirement benefits in capital employed was proper. The Department maintains that the adjustments for the December 31, 1999 tax period with respect to the first two issues are proper and in accordance with both KRS 136.070 and the KBTA Order.

Regarding the third issue in dispute, a portion of the refund request was the result of the Franklin Circuit Court's decision in Illinois Tools Works, Inc. v. Revenue Cabinet, 00-CI00623 ruling that KRS 136.071 is unconstitutional under the United States Constitution's Commerce Clause because of its Kentucky commercial domicile requirement. This decision is now final.

The third issue in dispute between the Department and [redacted] arises from how the ratio of investments in other corporations to total assets is determined. This ratio is determined in accordance with KRS 136.071 which provides:

> Notwithstanding any other provisions of this chapter, a corporation whose commercial domicile is in this state and holds directly or indirectly stock or securities in other corporations equal to or greater than fifty percent (50%) of its total assets, may at the option of the taxpayer, be considered as (1) corporation for purposes of determining and apportioning total "capital," or compute its "capital" under KRS 136.072 as follows:

In addition, KRS 136.071(2) provides that:

> … The term "stock and securities" as used in this section means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness.

It is [redacted]'s position that it meets the requirement that it held directly or indirectly stock or securities in other corporations equal to or greater than fifty percent (50%) of its total assets.

The Division of Protest Resolution, in an attempt to resolve this matter, requested specific information on [redacted], 2005, [redacted], 2006 and [redacted], 2013 and [redacted] was granted additional time to submit this information on the contested issues. However, [redacted] has never submitted the information requested, and therefore,

has failed to establish that it held directly or indirectly stock or securities in other corporations equal to or greater than fifty percent (50%) of its total assets.

The Division of Protest Resolution offered [redacted] extensions in multiple letters and emails to provide documentation to supports its protest. However, [redacted] failed to respond or submit any documentation that would allow the Department a basis for reconsideration of the tax liabilities. Further, even if [redacted] were to prevail on this third issue, [redacted] would not be entitled to any interest on this portion of the refund claim pursuant to KRS 134.580.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

The above referenced refund request is denied in its entirety.

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.

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET
Bethany Atkins Rice
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED