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In the matter of:

CITY OF [redacted]

Contact: [redacted], Mayor
[redacted] City Manager
[redacted]

FINAL RULING NO. 2007-35
August 24, 2007

FINAL RULING

The City of [redacted] filed a complaint with the Department of Revenue (hereinafter the "Department") on October 13, 2006, requesting a hearing with the Local Distribution Fund Oversight Committee (hereinafter the "Oversight Committee"). See KRS 136.658(4). A hearing was conducted before the Oversight Committee on [redacted], 2007, in accordance with the provisions of KRS 13B. Thereafter, the Oversight Committee issued its findings and recommendations to the Commissioner of the Department of Revenue. See Committee's Recommended Order No. 07-LDFOC-010 (June 20, 2007); KRS 136.658(5)(e). After reviewing the Oversight Committee's Recommended Order, the Department now issues a Final Ruling. See KRS 136.658(6).

In accordance with the mandate by the General Assembly, which in 2005 enacted legislation requiring political subdivisions, school districts, and special districts to participate in the gross revenue and excise tax fund, the City of [redacted] certified to the Department prior to December 1, 2005, on a prescribed form, the amount of collections it received from local franchise fees collected from communications service and multichannel video programming service providers and other fees during the period between July 1, 2004 and June 30, 2005. See KRS 136.650(1); Ky. Acts 2005, ch. 168, § 113, (eff. Jan. 1, 2006). On or about the month of [redacted] 2006, the City of [redacted] became aware that it was not receiving its expected portion of the monthly distribution by the Department from this fund (known as the "monthly hold-harmless amount"). See KRS 136.652(2); 136.654(3). After contacting the Department, it was determined that the City of [redacted] had submitted an incorrectly completed form

certifying its historical collections. The original form submitted to the Department by the City of [redacted] listed no franchise fees collected from communications service and multichannel video programming service providers on line fifteen (15) on page one of the certification form (Revenue Form 75A001). In addition, there was no breakdown of the telecommunications service providers from whom the fees were collected, as required on page two of the form. The City of [redacted] submitted a corrected certified form on [redacted], 2006, and requested retroactive payments of the monthly hold-harmless amount for reporting periods January 1, 2006 through July 31, 2006, representing the period prior to the time the certified form was corrected. The Department denied the request for retroactive payments. However, in [redacted], 2006, the City of [redacted] began receiving prospective monthly distributions of its hold-harmless amount as calculated from its corrected certification form, representing the [redacted], 2006 and subsequent reporting periods.

At issue is whether the Department properly denied the City of [redacted]'s request for retroactive payments for the period January, 2006 through July, 2006. City Manager, [redacted] of [redacted], argues that the form on which the certification of historical collections was submitted was confusing to both himself and the City's accountant. As such, the City of [redacted] asserts that the Department must be held accountable for the mistake, rather than the City itself. The Department disagrees.

KRS 136.650(1) required political subdivisions, like the City of [redacted], to submit certification of its tax collections on or before December 1, 2005. KRS 136.650(4) provides:

> [i]f any political subdivision, school district, special district, or sheriff's department believes that the data used to determine its certified amount of collections are inaccurate, the political subdivision, school district, special district, or sheriff's department may request a redetermination by the oversight committee established by KRS 136.658. *A redetermination shall be effective prospectively beginning with the next distribution cycle occurring ninety (90) days after the matter is finally settled.* (emphasis supplied)

Thus, although the statutory scheme allows for a correction of inaccurate data used to determine a city's monthly distribution of the hold-harmless amount, the statute requires the correction to be effective prospectively only.

Furthermore, retroactive payments made to a city would also violate KRS 136.650(2). That part of the statute requires the monthly distributions of the gross revenue and excise tax fund to distributees to be determined according to the certified historical collections submitted. However, the total monthly hold-harmless amount available to be distributed is capped. See 136.650(2)(c). Thus, any retroactive payment made to the City of [redacted] would adversely effect monthly distributions to other distributees, in violation of the statute. There would be no way to apply [redacted]'s recalculated monthly hold-harmless amounts for periods previously

distributed without somehow recapturing proportionate amounts already distributed to other political subdivisions, school districts, and special districts based on the previous historical collection percentages.

The Department, like any other administrative agency, is a creature of statute and must find within the statute warrant for the exercise of any authority. See 500 Associates Inc. v. Natural Resources and Environmental Protection Cabinet, 204 S.W.3d 121, 134 (Ky. App. 2006). When a statute prescribes something that an administrative agency must do, the agency may not add or subtract from those requirements. See Public Service Commission v. Attorney General, 860 S.W.2d 296, 298 (Ky. App. 1993). The Department does not have statutory authority to make retroactive payments to distributees. Accordingly, it properly denied the City of [redacted]'s request.

This 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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and