ERNIE FLETCHER
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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MIKE BURNSIDE
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JOHN MAY
Commissioner

In the matter of:

CITY OF [redacted]

Contact: [redacted]
City Administrator
City of [redacted]

FINAL RULING NO. 2007-40
August 24, 2007

FINAL RULING

The City of [redacted] filed a complaint with the Department of Revenue (hereinafter the "Department") on [redacted], 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-001 (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).

At issue is whether the Department distributed the correct monthly hold-harmless amount from the gross revenues and excise tax fund to the City of [redacted]. See KRS 136.652(2); 136.650(2). The City of [redacted] argues that the amount it actually received represents an annual shortfall of $[redacted], based upon the certified historical collections data it submitted to the Department on or before December 1, 2005. See KRS 136.650(1).

KRS 136.650(2)(c) limits the monthly hold-harmless amount distributed to all political subdivisions, school districts, and special districts to three million thirty-four thousand dollars ($3,034,000.00), resulting in a total annual distribution limit of thirty-six million, four hundred thousand dollars ($36,400,000). According to the provisions of KRS 136.650(2)(a), each

jurisdiction's share of this hold-harmless fund is determined by the ratio of each local jurisdiction's certified historical collections to the overall total certified historical collections of all parties eligible to participate in the fund.

Although apparently the General Assembly based this monthly distribution limit on what it determined to "represent[ ] one-twelfth (1/12) of the total potential collections," the historical collections data received by the Department from all participants totaled in excess of forty-two million dollars ($42,000,000). See KRS 136.650(2)(c) Thus, although it is undisputed that the Department correctly calculated the local historical percentage amount for the City of [redacted], it received an amount less than what it expected because of the statutory requirement to apply the local historical percentage of each jurisdiction to the fixed monthly hold-harmless amount available for disbursement.

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 increase the monthly distributions to include the excess amount reported by the participants over the three million thirty-four thousand dollar monthly distribution limit created by KRS 136.650(2)(c). Therefore, unfortunately the City of [redacted], like other political subdivisions, school districts, and special districts, must receive an amount approximately fifteen percent (15%) less than what it certified to the Department on or before December 1, 2005.

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
3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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,

John May
COMMISSIONER
DEPARTMENT OF REVENUE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

C: [redacted], attorney