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DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] LLC

Contact: [REDACTED], President

Final Ruling No. 2012-51
September 18, 2012

Denial of Purchase Exemption Certificate

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied an application for a purchase exemption (Form 51A125) submitted by [REDACTED] LLC ("[REDACTED]"). [REDACTED] has protested this denial.

An exemption from sales and use tax is provided in KRS 139.495(1) for sales of tangible personal property, digital property, or services to resident, nonprofit education institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code, provided the tangible personal property, digital property, or service are used solely within the educational, charitable, or religious function. Thus, if [REDACTED] is granted the purchase exemption it seeks, then it will be able to make tax-exempt purchases of tangible personal property, digital property and services by presenting a completed purchase exemption certificate. (Form 51A126) to its vendors.

[REDACTED] is a Kentucky limited liability company and its sole member is the [REDACTED] Inc. ("[REDACTED]"), which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. [REDACTED] itself is not exempt from income taxation under Section 501(c)(3), however. In a letter dated [REDACTED], 2012 submitted in connection with its protest, [REDACTED] acknowledges "the fact that [REDACTED] and [REDACTED] are separate legal entities with distinct operations and records."

██████████' application for a purchase exemption states that its primary function is the "[d]evelopment of facilities for life science research and start-up facilities and consulting services for entrepreneurs engaged in life sciences." Its protest of the DOR's denial of its application for a purchase exemption further states:

In 2008, ██████████ established ██████████ as its innovation center and development arm. Specifically, ██████████ established ██████████ to integrate ██████████ resources, including life sciences, with resources of the region to leverage their strengths for ██████████ academic enrichment and community economic development. ██████████ mission includes assisting in the development of the ██████████'s health science campus downtown, improving the physical and economic health of Kentucky, and acting as the center of life science research and development.

At issue is whether ██████████' application for a purchase exemption based upon KRS 139.495 was properly denied by the DOR.

It is well settled that an exemption from taxation such as the one claimed by ██████████ is to be strictly construed, with all doubts resolved against the exemption's application, the exemption will not be presumed or implied, but must instead be clearly stated. Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky.2004); LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004). The burden rests squarely upon the taxpayer claiming an exemption to establish that it is entitled to the exemption and that all of the exemption's requirements are satisfied. Id. ; Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W. 2d 937, 941 (Ky. App. 1989).

In this case, the exemption claimed cannot apply because ██████████ itself has not qualified for an exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code. ██████████ is a legal entity separate and distinct from its member, ██████████, and likewise any purchases of property ██████████ makes will be owned by it and not the ██████████. See KRS 275.010(2) ("A limited liability is a legal entity distinct from its members"); 275.240(1) ("Property transferred to or otherwise acquired by a limited liability company shall be the property of the limited liability and not of the members individually") Indeed, as noted above, ██████████ readily admits that it and "the Foundation are separate legal entities with distinct operations and records."

For the exemption provided by KRS 139.495(1) to apply, it is the institution making the purchases in question that must have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code. That is not the case here.

Accordingly, the DOR correctly denied ██████████' application for a purchase exemption based on KRS 139.495.

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 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 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. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; 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.

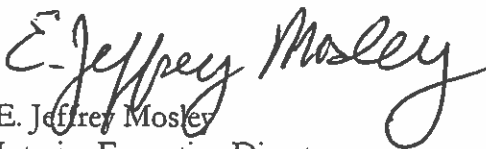
[REDACTED] LLC

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc:

Attn:

[REDACTED] PLLC
[REDACTED]

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The next section describes the methodology used in the study, including the data collection and analysis techniques. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The research was conducted in a systematic and rigorous manner, following the principles of good research practice. The data was collected from a representative sample of the population, and the analysis was carried out using appropriate statistical methods. The results of the study are presented in a clear and concise manner, and the implications of the findings are discussed in detail.

The findings of the study have important implications for the field of research. They suggest that there is a need for further research in this area, and that the results of this study can be used to inform policy and practice. The paper also highlights the importance of the research and the need for continued research in this field.

In conclusion, the paper provides a comprehensive overview of the research and its findings. It highlights the importance of the research and the need for continued research in this field. The results of the study are presented in a clear and concise manner, and the implications of the findings are discussed in detail.

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