STEVEN L. BESHEAR
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

JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted], INC.

Contact: [redacted], Inc.
Attn: [redacted]

FINAL RULING NO. 2009-60
December 18, 2009

Tangible Personal Property Tax Refund Request

FINAL RULING

The Kentucky Department of Revenue currently has before it a request by [redacted], Inc. ("[redacted]") that the taxes due on its current year's assessment be offset by ad valorem or property taxes it appears to have paid, apparently erroneously, a number of years ago.

[redacted]'s request is in effect a refund claim. Subsection 2 of the applicable refund statute, KRS 134.590, states in relevant part the following:

> No state government agency shall authorize a refund unless each taxpayer individually applies for a refund within two (2) years from the date the taxpayer paid the tax. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based.

All of the prior years' taxes that [redacted] seeks to have offset or credited against the current year's taxes were paid more than two years before the date of its request. [redacted]'s request is therefore barred under the plain and unambiguous statutory language quoted above. [redacted] cannot avoid the application of KRS 134.590(2) by characterizing its refund request as a request for a credit. There is no legal authority for what it seeks. See also American Life and Accident Insurance Company of Kentucky v. Commonwealth, 173 S.W.3d 910 (Ky. App. 2004).

This letter is the final ruling of the Kentucky 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,
Finance and Administration Cabinet

E. Jeffrey Mosley

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED