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FINANCE AND ADMINISTRATION CABINET
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████ LLC
d/b/a ██████████
Attn: ██████████, Sr. Tax Consultant

FINAL RULING NO. 2010-65
October 4, 2010

Telecommunications Tax Penalty Refund Denial
for the period July 1, 2006 through August 31, 2008

FINAL RULING

The Kentucky Department of Revenue ("Department") has denied a refund claim in the amount of \$██████████ plus applicable interest as depicted in the chart below.

Refund Period	Penalty	Interest as of 10/04/2010	Total per Period
07/01/2006 – 08/31/2008	\$██████████	\$██████████	\$██████████
TOTAL	\$██████████	\$██████████	\$██████████

██████████ LLC, dba ██████████ ("██████████") is a cable system operator offering digital television, phone, security, and high-speed internet services.

On ██████████, 2008, ██████████ remitted tax, penalty and interest on past due returns for the periods July 1, 2006 through August 31, 2008. By letter dated ██████████, 2008, ██████████ submitted a claim for refund of penalties it paid for these periods,

contending that its failure to file the appropriate returns and remit the tax in a timely manner was the result of a miscommunication within its company and as such, the penalty should be abated.

KRS 131.180 states in pertinent part:

- (1) Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late...
- (2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department, or...fails to have timely paid at least seventy-five (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late...

KRS 131.010 (9) states:

“Reasonable Cause” means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation.

The 2005 Session of the General Assembly passed House Bill 272 enacting a Telecommunications tax that became effective for the filing periods beginning January 1, 2006. The Department sent numerous mailings and publications, provided training and presentations to various telecommunication provider groups and associations in the period following the enactment. Additionally, the Kentucky Tax Registration Application, Section C, # 32 specifically states that both cable and satellite broadcast services and communication services are subject to the telecommunications tax.

As indicated above, penalties have been assessed pursuant to KRS 131.180(1) and (2) because of [REDACTED]'s failure to timely file its returns and timely pay at least 75% of the tax determined to be due by the Department. [REDACTED] has not shown that the penalties

were erroneously applied and it has failed to demonstrate that the failures triggering the penalties' imposition was due to reasonable cause.

Based upon the foregoing, the Department properly denied ██████████'s penalty refund claims of \$██████████ and ██████████'s protest of that denial is hereby disallowed.

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. 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

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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



E. Jeffrey Mosley

Interim Executive Director

Office of Legal Services for Revenue