



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
501 HIGH STREET  
FRANKFORT, KENTUCKY 40601  
Phone (502) 564-3226  
Fax (502) 564-3875  
www.kentucky.gov

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2011-18  
March 3, 2011

Withholding tax assessments for the period  
November 30, 2009 through December 31, 2009

### FINAL RULING

The Kentucky Department of Revenue has outstanding tax assessments against [REDACTED] Co., Inc. These consist of withholding tax assessments for the periods ending November 30, 2009 through December 31, 2009. Due to the failure of [REDACTED] Co., Inc. to pay the assessed tax, the company's president [REDACTED] was assessed for the unpaid amounts. The following schedule reflects the total underpayment, applicable interest accrued to date, and all assessed fees and penalties for each period.

### Withholding Tax

Period	Tax	Interest as of 3/3/11	Fees	Penalty	Total Per Period
11/30/2009-12/31/2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the periods in issue, [REDACTED] was President of [REDACTED] & [REDACTED] Co., Inc.

KRS 141.390(2) provides that "[t]he president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any corporation . . . shall be personally and individually liable, both jointly and severally, for any" unpaid withholding tax. KRS 141.390(2) goes on to note that "[n]o person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that taxes imposed by this chapter become or became due."

[REDACTED] has argued that she is not liable for the unpaid withholding taxes of [REDACTED] Co., Inc. because she claims that she was not involved in the details of its business. However, KRS 141.390(2) only excuses those officers from liability who lack the listed type of "authority" in the taxpayer corporation. [REDACTED] has pointed to no provision of the articles of incorporation or bylaws of [REDACTED] Co., Inc. that limited her authority as president. Whether or not she exercised the authority of the office of president is not relevant under KRS 141.390(2).

Based upon the foregoing, and after considering the information presented by [REDACTED] in her protest and supporting statement, it is held that the amounts assessed upon [REDACTED] are determined by the Department of Revenue to be correct and legitimate liabilities due the Commonwealth of Kentucky.

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 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,

DEPARTMENT OF REVENUE



Stephen Crawford  
Assistant General Counsel

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED