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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████ LLC
██████████

FINAL RULING NO. 2011-83
November 2, 2011

Limestone, Sand, and Gravel Ad Valorem Tax Assessment
As of January 1, 2011

FINAL RULING

The Kentucky Department of Revenue ("DOR") has issued limestone, sand, and gravel ad valorem tax assessments to ██████████ LLC ("the Taxpayer") for 2011 pursuant to KRS 132.820. In the table below is the relevant information concerning these assessments, including the fair cash value of the property assessed, which consists of limestone, sand and gravel reserves, as of the January 1, 2011 assessment date. The Taxpayer has protested the assessments in their entirety.

2011 Assessment Lease Number	County	Reported By	Assessed Value
Parcel ██████████	██████████	██████████	\$ ██████████

The reserves in question were previously owned by ██████████, Inc. In 2010, one-half of the interest of ██████████, Inc. in these reserves was transferred or assigned to the Taxpayer and the other half was transferred to another entity. The surface estate is owned by ██████████, Inc., which operates a quarry engaged in extracting these reserves. The Taxpayer and the other entity receive royalties from ██████████, Inc.

At issue is whether the DOR correctly assessed the fair cash value of the reserves in question. The Taxpayer asserts that the assessment is excessive or duplicative because the DOR has counted twice the royalty income used in arriving at the assessment. In the alternative, the Taxpayer claims that the reserves in question are not minerals subject to ad valorem taxation under KRS 132.820, based upon the Court of Appeals' decision in *Florman v. Mebco Limited Partnership*, 207 S.W.3d 593 (Ky. App. 2006).

The DOR's assessment is based upon the royalty income derived by the Taxpayer from the exploitation of the reserves in question by ██████████, Inc. This information has been obtained from returns filed by ██████████, Inc. pursuant to KRS 132.820(2), which show, among other things, the applicable royalty rate and the prior year's production. The DOR's has correctly and accurately used this information in arriving at this assessment. There has been no duplicative use of this information or duplication in the assessment of the taxable property or reserves in question.

The Taxpayer's reliance upon *Florman*, *supra*, is misplaced. In *Florman*, the Court of Appeals considered whether limestone was considered a "mineral" in the context of the interpretation of a deed. 207 S.W.3d at 600. Thus, *Florman* is not applicable to whether limestone reserves are subject to ad valorem tax assessments as a separate interest in property. "Property" subject to ad valorem tax assessment has long been broadly defined. *Button v. Drake*, 302 Ky. 517, 195 S.W.2d 66 (1946). With respect to the assessment of minerals, the General Assembly has stated in broad terms that

The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Department of Revenue as a distinct interest in real property, separate and apart from the surface real estate...

KRS 132.820(1). The DOR has long construed this statutory language and the relevant constitutional provision (Ky. Const. § 170) as embracing, and allowing for the separate assessment of, limestone, sand and gravel reserves and it is well settled that such a "long-continued construction[] and application by authorities entrusted with [a statute's] administration" is entitled to great, if not controlling, weight. *GTE and Subsidiaries v. Revenue Cabinet*, 889 S.W.2d 788, 792 (Ky. 1994); *Alphin v. Joseph E. Seagram & Sons, Inc.*, 294 S.W.2d 515, 517 (Ky. 1956). This longstanding administrative construction of the law is reflected and indeed, was approved by the Court of Appeals in *Calvert v. Adams Stone Corp.*, No. 93-CA-1999, KY TAX REPORTER (CCH) ¶ 202-350 (Jan. 13, 1995).

It should also be noted that the General Assembly has also recognized sand, gravel and limestone to be minerals for taxation purposes. The following is stated in KRS 143A.010(2), which relates to the taxation of the severance and processing of natural resources:

“Natural resource” means *all forms of minerals including* but not limited to rock, stone, *limestone*, shale, *gravel*, sand, clay, natural gas, and natural gas liquids which are contained in or on the soils of waters of this state.

(Emphasis in italics.)

The mineral reserves in question have been properly assessed at their fair cash value as required by law. See KRS 132.820(1); Ky. Const. § 172. These assessments are presumed to be valid and it is the Taxpayer's burden to prove otherwise. *Revenue Cabinet v. Gillig*, 957 S.W.2d 206 (Ky. 1997); *Walter G. Hougland & Sons v. McCracken County Board of Supervisors*, 306 Ky. 234, 206 S.W.2d 951 (1947). The Taxpayer has not met this burden in this case.

Based upon the foregoing, the ad valorem tax assessment is valid and correct and should not be reduced or set aside.

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 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
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

[REDACTED]