



**FINANCE AND ADMINISTRATION CABINET  
OFFICE OF THE SECRETARY**

**Ernie Fletcher**  
Governor

Room 383, New Capitol Annex  
Frankfort, Kentucky 40601  
Phone: (502) 564-4240  
Fax: (502) 564-6785

**John R. Farris**  
Secretary

In the matter of:

██████████, INC.

Contact:

██████████  
██████████, Inc.

FINAL RULING NO. 2006-78  
September 20, 2006

Assessment of Public Service Company  
for tax years 1999, 2001, 2002 and 2003.

**FINAL RULING**

The Kentucky Department of Revenue currently has outstanding assessments of property totaling \$██████████, \$██████████, \$██████████ and \$██████████ for tax years 2003, 2002, 2001 and 1999 against ██████████, Inc (Taxpayer). The issue is whether or not the company has nexus in Kentucky. The taxpayer claims the company's value is \$██████████ because the company does not have nexus in Kentucky. The taxpayer's principal business activity is a reseller of telecommunications service. The taxpayer was a public service corporation for the 2003, 2002, 2001 and 1999 tax years.

At issue are the following:

1. Whether the taxpayer has nexus as a public service company in Kentucky. It is the taxpayer's position that they have no physical presence (employees, property, or offices) in Kentucky. It is further the taxpayer's position that Kentucky cannot levy this tax against the taxpayer due to a lack of physical presence. Taxpayer is arguing Quill Corporation v. North Dakota, 504 U.S. 298 (1992).
2. Whether the Department's current valuations are constitutional. Taxpayer contends that the Department of Revenue's position violates multiple provisions of the Kentucky Constitution, the Federal Constitution, the Kentucky Revised Statutes, Kentucky case law and the common law.

Concerning the first issue, it is the Department's position that the taxpayer has nexus in Kentucky and would be liable for property taxes. The recent Franklin County Circuit Court case of Annox, Inc. v. Revenue Cabinet, Commonwealth of Kentucky, & Kentucky Board of Tax Appeals, Franklin Circ. Ct, Div. II, Civil Action No. 03-CI-1605 (Feb. 17, 2005) held the position that a switchless reseller had operating property, as defined by KRS 136.115(2), in the state of Kentucky during the time period for which the assessment was made. The agreement to either buy minutes or lease the lines of others, as well as the agreement with the Kentucky public service commission, granting the company the right to do business in the state constitutes a nexus in Kentucky and is taxable. KRS 136.115 and KRS 136.120 support this position.

KRS 136.120(1) states in part:

Every telephone company shall annually pay on its operating property to the state and to the extent the property is liable to taxation shall pay a local tax thereon to the county, incorporated city, and taxing district in which its operating property is located.

KRS 136.115(2) states:

"Operating property" as used in KRS 136.120 through 136.180 means both the operating tangible property and the franchise, and the payment of taxes on the assessment of operating property shall be deemed the payment the payment of taxes on the operating tangible property and the franchise.

Concerning the second issue, all property must be assessed at its fair cash value (KY Constitution Sec. 172). The Department of Revenue, Public Service Branch has a standard valuation process to determine the company's fair market value to comply with KRS 136.160.

KRS 136.160(1) states:

The Revenue Cabinet shall determine the fair cash value of the operating property of a domestic public service corporation as a unit. The fair cash value of the operating property shall be equalized.

It is the Department of Revenue's position that the assessment was completed in accordance with Kentucky law in order to determine the taxpayer's fair market value.

Based on the above, the Department maintains that ██████████, Inc. is a public service company and is subject to full state and local property tax rates on the values totaling \$██████████, \$██████████, \$██████████ and \$██████████. 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,

FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN

Director

Division of Protest Resolution

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

