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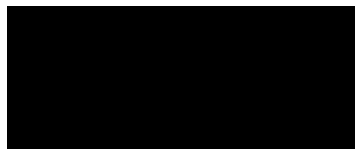
LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] LLC

Contact:



FINAL RULING NO. 2013-60
November 15, 2013

Denial of Purchase Exemption Certificate

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied an application for a purchase exemption (Form 51A125) submitted by [REDACTED] LLC ("[REDACTED]"). [REDACTED] has protested this denial.

An exemption from sales and use tax is provided in KRS 139.495(1) for sales of tangible personal property, digital property, or services to resident nonprofit education institutions which have qualified for exemption from income taxation under §501(c)(3) of the Internal Revenue Code, provided the tangible personal property, digital property, or service is used solely within the educational, charitable, or religious function. Thus, if [REDACTED] is granted the purchase exemption it seeks, it will be able to make tax-exempt purchases of tangible personal property, digital property and services by presenting a completed purchase exemption certificate (Form 51A126) to its vendors.

[REDACTED] is a Kentucky limited liability company and its sole member is [REDACTED] which is exempt from income taxation under §501(c)(3) of the Internal Revenue Code. However, [REDACTED] itself is not exempt from income taxation under §501(c)(3).

[REDACTED]'s application for a purchase exemption states that its primary function is operating a Christian school for grades pre-kindergarten through twelfth. The applicant has for many years operated a Christian school as a ministry of their church. On [REDACTED], 2012, the church established itself as a separate limited liability Company (LLC).

At issue is whether ██████████'s application for a purchase exemption based upon KRS 139.495 was properly denied by the DOR.

The taxpayer submitted a letter requesting the purchase exemption certificate without the prerequisite §501(c)(3) determination letter for ██████████. The school contends it has already qualified for tax exemption status under §501(c)(3) of the Code and as a result is entitled to a sales and use tax purchase exemption under Kentucky statute. According to the taxpayer's representative, the IRS recognizes that a disregarded entity whose sole owner is a §501(c)(3) organization is not required to file a Form 1023. Doing so would destroy the taxpayer's disregarded entity status for federal tax purposes. Instead, the disregarded entity inherits its parent's exemption. Because the notice requirement of Code §508(a) does not apply to a disregarded entity that is wholly owned by a §501(c)(3) organization, it will not file a Form 1023 and will not receive a separate determination letter. Its exemption under §501(c)(3) is based on the parent's exemption, therefore, the relevant determination letter is that of the parent which was provided.

It is well settled that an exemption from taxation such as the one claimed by ██████████ is to be strictly construed, with all doubts resolved against the exemption's application, the exemption will not be presumed or implied, but must instead be clearly stated. Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky. 2004); LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004). The burden rests squarely upon the taxpayer claiming an exemption to establish that it is entitled to the exemption and that all of the exemption's requirements are satisfied. *Id.*; Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W. 2d 937, 941 (Ky. App. 1989).

In this case, the exemption claimed cannot apply because ██████████ itself has not qualified for an exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code.

The Department contends that in order to obtain the purchase exemption certificate, ██████████ must be in compliance with KRS 139.495. In reviewing the IRS LLC Reference Guide Sheet, it states a single-member LLC seeking §501(c)(3) status must first amend its Articles of Organization to conform to the twelve criteria outlined in the IRS's Guide Sheet and Instructions. ██████████ took that action. However, DOR cannot independently verify whether these amendments to ██████████'s Articles of Organization are or would be satisfactory to the IRS. The parent, ██████████ needs to request a Private Letter Ruling (PLR) from the IRS or a request for a group exemption letter, whichever may apply. The PLR specifically discusses the applicability of §501(c)(3) status to a disregarded LLC of a Section 501(c)(3) organization. The Department is merely requesting that ██████████ or its parent follow the prescribed path set forth by the IRS for a §501(c)(3) status determination of a disregarded LLC of a §501(c)(3) organization.

For the exemption provided by KRS 139.495(1) to apply, it is the institution making the purchases in question that must have qualified for exemption from income taxation under §501(c)(3) of the Internal Revenue Code. That is not the case here. Accordingly, the DOR correctly denied ████████'s application for a purchase exemption based on KRS 139.495.

This 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 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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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.

[REDACTED], LLC
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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET


Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CC:

[REDACTED]
Attn: [REDACTED]
[REDACTED]

the 1990s, the number of people in the UK who are aged 65 and over has increased by 1.5 million (1990–2000) and is projected to increase by a further 1.5 million by 2020 (Office for National Statistics 2001). The number of people aged 65 and over is projected to increase by 2.5 million by 2020 in the USA (U.S. Census Bureau 2000).

There is a growing awareness of the need to develop strategies to meet the needs of older people. The World Health Organization (WHO) has developed a 'Global Strategy on Ageing and Health' (WHO 1999) and the United Nations has developed a 'Global Plan of Action on Ageing' (United Nations 1999). The WHO strategy focuses on the need to develop strategies to meet the needs of older people in the context of the 'new global realities' of the 21st century. The United Nations plan focuses on the need to develop strategies to meet the needs of older people in the context of the 'new global realities' of the 21st century.

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