



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] Corp, Inc

Contact: [REDACTED] Corp. Inc.

Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2012-09
February 1, 2012

Telecommunications Tax refund denial
for the periods April 1, 2006 through December 31, 2007

FINAL RULING

Period	Tax	Interest as of 02/01/2012	Totals
4/1/06 - 12/31/07	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])
TOTAL	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])

The Kentucky Department of Revenue ("DOR") has denied a refund claim submitted by [REDACTED] Corp. ("[REDACTED]"). The pertinent amount of the refund claim and the period to which it relates is set forth above. The Department's denial of the refund claim has been protested in accordance with KRS 131.110 and 103 KAR 1:010. See KRS 134.580(3).

██████████ is a regional telecommunications company that has been providing telecommunications services for ██████████, ██████████, and ██████████ counties in Kentucky for more than ██████████ years. ██████████ maintains a physical plant including poles, lines and switching facilities as well as buildings and offices. ██████████'s main revenue comes from providing communication services as an Incumbent Local Exchange Carrier ("ILEC"). However, ██████████ disputes that all of its receipts are subject to the telecommunications tax imposed on its gross revenues under the Multichannel Video Programming and Communications Services Tax enacted in 2005 by the Kentucky General Assembly and made effective January 1, 2006. *See generally*, KRS 136.600 *et seq.*

At issue is whether amounts received by ██████████ attributable to: (1) disbursements from the federal Universal Service Fund, (2) the provision of directory assistance and database services, and (3) regulated non-recurring service charges, are subject to the tax imposed by KRS 136.616(2)(b) on "gross revenues received for the provision of communication services." "Communications service" is defined as "the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information . . ." KRS 136.602(2).

██████████ contends disbursements from the federal Universal Service Fund are not received for the provision of "communications service" as defined in KRS 136.602(2). However, DOR takes the position that ██████████ receives funds from the federal Universal Service Program for the "provision, maintenance, and upgrading of [telecommunication] facilities and services" to underserved areas. *See* 47 U.S.C. §254(e). ██████████ is only eligible to receive the Universal Service Program support payments in question because it is a telecommunications carrier that provides communications services. *Id.*; 47 U.S.C. §214(e). These payments therefore constitute a reimbursement to ██████████ for the provision of communications service for purposes of the gross revenues tax imposed by KRS 616(2)(b).

Further, the universal support payments received by ██████████ do not fall within the exemption provided by KRS 136.602(6)(b):

(6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:

(b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or

multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;

██████████ argues that since the Universal Service Program support payments are sourced to a tax or fee levied by the United States they are within the purview of the exemption. However, “[w]e begin with the basic rule of statutory construction that tax exemptions are narrowly construed, and the party seeking the exemption has the burden to show that he, she, or it is entitled to the exemption.” *Revenue Cabinet v. Hubbard*, 37 S.W.3d 717, 719 (Ky. 2000). ██████████ has not met this burden. The plain language of the statute indicates the intent of the General Assembly was to refrain from taxing revenues attributable to taxes or fees permitted to be passed on to a carrier’s customers. If the General Assembly intended to exclude all revenue whose source traced back to a tax or fee levied by the United States it would have expressly provided as much.

All telecommunications carriers must contribute to the Universal Service Fund. These “universal service fees” are passed through to, and received from, customers. However, unlike universal service fees, the universal support payments at issue are not a tax or fee “required to be added to the sales price of the communications service[.]” Instead, universal support payments are contributions made by the federal government from the Universal Service Fund to eligible telecommunications carriers such as ██████████ to “supplement the shortfall in general revenue” resulting from the carrier’s provision of telecommunication services to the program’s targeted service areas. *United States v. Coastal Utilities Inc.*, 483 F. Supp.2d 1232, 1243 (S.D.Ga. 2007) *aff’d* 514 F.3d 1184 (11th Cir. 2008); *see also*, *AT&T Inc. v. United States*, 629 F.3d 505, 515-516 (5th Cir. 2011). Thus, the universal support payments do not fall within the exemption provided in KRS 136.602(2)(b) because they are not payments derived from ██████████’s customers. Further, the fact that universal support payments are required to be included in a telecommunications carrier’s income for federal income tax purposes indicates that taxation of this revenue does not frustrate the congressional intent behind the Universal Service Program. *See e.g.*, *United States v. Coastal Utilities Inc.*, 483 F. Supp.2d at 1248; *AT&T Inc. v. United States*, 629 F.3d at 515, 520.

██████████ also contends that receipts for directory assistance and database services it provides to customers are not a “communication service” as defined in KRS 136.602(2). “ ‘Communications services’ do[] not include information services[.]” KRS 136.602(2)(b). ██████████ argues that the directory assistance and database services are merely information services and therefore are not subject to tax.

It is DOR’s position that ██████████ is doing more than providing information to its customers. ██████████ is providing more than information; it is communicating that

information to its customers telephonically at the time and place of the customer's choosing. The directory assistance charge is not for the information provided (similar information is available free of charge in paper directories or online). It covers the costs of transmitting the information to the customer. Charges for directory assistance are therefore charges for a communications service and should be included in ██████████'s gross revenues.

Finally, ██████████ contends that its regulated, non-recurring service charges are not "communications services." ██████████'s regulated services consist of three basic types of services: general activation services, long distance carrier processing services, and non-communication account maintenance services. ██████████ originally applied the tax on gross revenues imposed by KRS 136.616(2)(b) to the funds received from the above regulated services, but now believes that all these charges involve services necessary to facilitate and maintain communications access rather than the provision of communications services.

It is DOR's position that these fees are either for facilitating customers transactions with other telecommunications providers, or for the provision of ancillary communications services, both of which are encompassed within the statutory definition of "communication service" provided in KRS 136.602(2). Therefore ██████████'s regulated, nonrecurring service charges must be included in ██████████'s gross revenues.

Based upon the foregoing, and the information supplied as part of or in connection with ██████████'s protest and supporting statement, the Department has determined that the sales tax refund was properly denied.

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
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

cc:

██████████, PLLC
██████████

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The methodology section describes the research design and the data collection process. The results section presents the findings of the study, and the conclusion section summarizes the main findings and provides recommendations for future research.

The study was conducted in a laboratory setting, and the data was collected using a series of experiments. The results of the experiments were analyzed using statistical methods, and the findings were compared to the results of previous studies. The study found that the research objectives were achieved, and the results were consistent with the findings of previous research.

The study has several limitations, including the small sample size and the laboratory setting. Future research should aim to address these limitations and to conduct the study in a more naturalistic setting. The study also has several strengths, including the use of a rigorous methodology and the collection of high-quality data.

In conclusion, the study provides valuable insights into the research topic and contributes to the existing literature. The findings of the study are consistent with the findings of previous research, and the study has several strengths and limitations. Future research should aim to address the limitations of the study and to conduct the study in a more naturalistic setting.

[REDACTED]

the 1990s, the number of people in the UK who are aged 65 and over has increased by 1.5 million (1990–1999) and is projected to increase by a further 1.5 million by 2010 (Office of National Statistics 2000). The number of people aged 65 and over in the UK is projected to increase from 10.5 million in 1999 to 12.5 million in 2010, with the number of people aged 75 and over increasing from 4.5 million to 5.5 million in the same period (Office of National Statistics 2000).

There is a growing awareness of the need to develop strategies to meet the needs of the ageing population. The Department of Health (2000) has identified the need to develop a 'new paradigm' of care for the ageing population, one that is based on a 'continuum of care' rather than a 'dual system' of care. The 'new paradigm' is based on the principle that care should be provided in the community wherever possible, and that care should be tailored to the individual's needs.

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