



ERNIE FLETCHER
GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
www.kentucky.gov

ROBBIE RUDOLPH
SECRETARY

In the matter of:

██████████, Inc.

Contact: ██████████ LLP

Final Ruling No. 2005-20
July 6, 2005

Income Tax Notices of Tax Due
Tax years ended December 31, 1997

FINAL RULING

The Kentucky Department of Revenue has issued a corporation income tax assessment to ██████████, Inc. for the tax period ending on December 31, 1997 totaling \$██████████ plus applicable interest. The assessment is the result of a desk audit by the Department of Revenue. The following table provides a breakdown of the amount of corporation income tax assessed and applicable interest as of July 17, 2000.

YEAR	TAX	INTEREST
1997	██████████	██████████

The records made available and examined by the Department included the federal and state income tax returns. The auditor reviewed the state tax return to determine its accuracy. It was determined that the taxpayer incorrectly classified interest and rental income as non-business. As a representative of the taxpayer, ██████████ LLP filed a protest of the assessment stating that "the corporation's commercial domicile is ██████████ and the properties creating the interest and rent income are utilized in ██████████ and ██████████."

The Department made the adjustments under the provisions of KRS 141.120(1)(a).

KRS 141.120(1)(a) states:

"Business income" means income arising from transactions and activity in the regular course of a trade or business of the corporation and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes integral parts of the corporation's regular trade or business operations."

Neither interest income, nor rental income is automatically classified as non-business income. Each source of income must be examined in order to determine whether it is business or non-business income. Based on the above cited statute, the auditor reclassified the interest and rental income as business income arising in the regular course of the corporation's business. The Kentucky Court of Appeals has stated, "[this] statute does not limit business income to income from the taxpayers' trade". See Cincinnati, New Orleans and Texas Pacific Railway Company; and Southern Railroad Company vs. Kentucky Department of Revenue, 684 S.W.2d 303, 305 (Ky. App. 1984). Furthermore, in Corning Glass Works vs. Department of Revenue, Commonwealth of Kentucky, 616 S.W. 789, 794 (Ky. App. 1981) the Court stated,

[t]he law no longer requires that taxable net income have an identifiable source within this state. The apportionment formula has been generally accepted and is a fair allocation of all income which runs afoul of no constitutional safeguard. (citations omitted)

Based on the above, the assessment of additional tax for the 1997 tax period is correct. 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 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











