



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:

[REDACTED], INC.

Contact: [REDACTED], Senior Associate  
[REDACTED] LLP

[REDACTED]

FINAL RULING NO. 2005-43  
September 9, 2005

Corporation income tax assessment for  
tax years 1999 & 2000

**FINAL RULING**

The corporation filed amended license tax returns for the periods ended December 31, 1999 and December 31, 2000 requesting refunds totaling \$ [REDACTED]. The following table provides a breakdown of the amount of tax that the corporation believes still remains to be refunded.

Tax Year	Alleged Overpayment
1999	[REDACTED]
2000	[REDACTED]
<b>Totals</b>	[REDACTED]

The corporation claims that it pays the public service tax under KRS 136.120 and is exempt from paying license tax under KRS 136.070. However, the Department of Revenue does not have any record of [REDACTED], Inc. paying the public service tax for the periods December 31, 1999 and December 31, 2000.

The corporation submitted a sublease and a document listing the amount of tax associated with each site that were reviewed by the Department of Revenue's Public Service Branch. The information failed to provide the Public Service Branch with any proof that the corporation actually paid the public service tax as the documents only showed that the corporation might have a tax obligation, not that it ever paid that obligation. After several phone calls the corporation indicated that it was going to withdraw its protest of the license tax refund denial. However, the corporation has never submitted any evidence showing that it paid the public service tax nor has it submitted a withdrawal of the protest.

At issue is whether the corporation has complied with the requirements of KRS 131.110(1), which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with "something more substantial than mere denials of tax liability." Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky.App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

The courts have held that this statutory provision (KRS 131.110(1)) is "mandatory in nature" and that failure to submit documentation as it requires will result in the taxpayer's loss of the right to further review of the assessment or refund denial in question. Scotty's Construction Co. v. Revenue Cabinet, Ky.App., 779 S.W.2d 234 (1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

After reviewing your protest, and the applicable statutes, the corporation's refund claim of \$██████████ for the periods ended December 31, 1999 and December 31, 2000 is 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 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



