



ERNIE FLETCHER
GOVERNOR

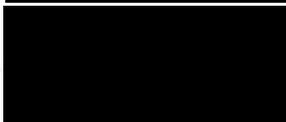
OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
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(502) 564-4240
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

██████████, INC. FKA ██████████, INC.

Contact: ██████████ CPA
██████████, Inc.



FINAL RULING NO. 2005-72
December 12, 2005

Corporation income and license tax assessments
for taxable periods ending September 30, 2000 through September 30, 2002

FINAL RULING

The Kentucky Finance and Administration Cabinet has issued corporation license tax assessments against ██████████, Inc. FKA ██████████, Inc. for the fiscal year ending September 30, 2000 through September 30, 2002 totaling \$██████████ plus applicable interest, fees and penalties. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as accrued interest as of October 3, 2005.

LICENSE TAX ASSESSMENT:

Tax Period	Tax Due	Interest	Fees	Penalties	Total
FYE 9/00	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
FYE 9/01	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
FYE 9/02	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Totals	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

The Corporation has also filed Kentucky Amended Corporation Income and License Tax Returns for the fiscal year ending September 30, 2000 through September 30, 2002 requesting an alleged total refund of \$██████████ plus interest. The following table provides a breakdown of the amount of the alleged requested refund.

ALLEGED REFUND:

Tax Period	License Tax	Interest to 10/3/05	Totals
FYE 9/00	\$██████████	\$██████████	\$██████████
FYE 9/01	\$██████████	\$██████████	\$██████████
FYE 9/02	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████

The Corporation License Tax Assessments resulted from a review of Corporation Income and License Tax Returns, Kentucky Form 720 filed for each year.

KRS 136.070(2) (a) provides:

The term "capital" as used in this section means capital stock, surplus, advances by affiliated companies, intercompany accounts, borrowed moneys or any other accounts representing additional capital used and employed in the business. Accounts properly defined as "capital" in this section shall be reported at the value reflected on financial statements prepared for book purposes as of the last day of the calendar or fiscal year;

The Department of Revenue included in the calculation of capital employed subject to tax amount Reserved & Deferred accounts and adjustments to Retained Earnings to reflect the end of the year balance sheet balances. The Department also included in the calculation of capital employed the "Capital stock" amount which was not properly included in the Corporation's capital employed calculation.

The Corporation responded to the adjustments and changes made by the Department by filing amended returns dated ██████████, 2005 for the periods in question restating the balance sheet causing the alleged refunds. These amended returns did not include the adjustments made by the Department. The Corporation's amended returns reported the removal of a bad debt which allegedly became worthless in the 2000 tax year and according to the Corporation should not have been included in the license tax computation. However, at the time the 1999 – 2002 federal income tax returns were filed, no bad debt deduction was taken. As a result, from the information provided to the Department, the decision that the debt was worthless was made several years after 2002. However, the license tax deals with the measurement of the value of capital employed in the taxpayer's business in a given year, not what it might be based on events in future years. Kroger Co. v. Department of Revenue, 614 SW2d 705, 709 (Ky. App. 1981).

Based on KRS 136.070 (2)(a), the Department's position has been not to allow amended returns at later dates reflecting restatements of balance sheet accounts except for correction of errors in recording amounts from books or trial balances to the balance sheet. This position is based on the premise that changes of accounting method and changes in the way of treating items for book purposes shown in the year of the change rather than restating balance sheets for the prior periods.

After reviewing the information provided by the taxpayer, and the applicable statutes, it is the position of the Finance and Administration Cabinet that the license tax assessments issued against the corporation for taxable periods ending September 31, 2000 through September 30, 2002 are valid liabilities due the Commonwealth of Kentucky. The Cabinet also denies the formal request for a refund of taxes paid by the Corporation.

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

