



ERNIE FLETCHER  
GOVERNOR

OFFICE OF THE SECRETARY  
FINANCE AND ADMINISTRATION CABINET  
383 CAPITOL ANNEX  
FRANKFORT, KENTUCKY 40601  
(502) 564-4240  
(502) 564-6785 FAX

ROBBIE RUDOLPH  
SECRETARY

In the matter of:

[REDACTED], INC.

Contact: [REDACTED], Inc.

FINAL RULING NO. 2005-90  
December 15, 2005

Corporation Income Tax Assessment  
for the tax year September 1, 1998  
through August 31, 1999

Corporation License Tax Assessment  
for the tax years September 1, 1998  
through August 31, 2001

### FINAL RULING

The Kentucky Department of Revenue (successor to the Kentucky Revenue Cabinet) has issued Corporation Income and License Tax Assessments against [REDACTED] Inc. for the taxable periods ended August 31, 1999 through August 31, 2001 totaling \$ [REDACTED] plus applicable interest, fees and penalties.

#### Corporation Income Tax Assessment

Tax Period	Tax	Interest	Fees	Penalty	Total
9/01/98-8/31/99	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]

#### Corporation License Tax Assessments

Tax Period	Tax	Interest	Fees	Penalty	Total
9/01/98-8/31/99	\$ [REDACTED]				
9/01/99-8/31/00	\$ [REDACTED]				
9/01/00-8/31/01	\$ [REDACTED]				
Totals	\$ [REDACTED]				

The interest, fees and penalties reflected in the above table are calculated through October 28, 2005; however these amounts will continue to accrue. The fees and penalties are assessed pursuant to KRS 131.440 and KRS 131.180 respectively.

██████████, Inc. is a Kentucky corporation based in ██████████, Ky. The corporation operates a ██████████ service that serves clients both within and without Kentucky. The property and payroll, however, are 100% in Kentucky.

The Corporation Income and License Tax Assessments resulted from a review of Corporation Income and License Tax Returns, Kentucky Form 720 filed for each year. At issue are the following adjustments. The apportionment and allocation, Schedule A, showed the corporation did not own or lease tangible property with a situs without this state or have employees receiving compensation without this state. Therefore, pursuant to KRS 141.010(14)(a) and KRS 136.070(2)(b) the corporation was not subject to allocate and apportion net income or apportion total capital and therefore required to report one hundred percent (100%) of net income and total capital to Kentucky.

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 capital calculation the “Mortgages, notes, bonds payable in less than 1 year” and “Mortgages, notes, bonds payable in 1 year or more” amounts. These accounts reflect borrowed moneys and have properly been included in the capital employed calculation. The ██████████, 2001 addition to capital employed also included the “Capital stock” amount which was not properly included in the corporation’s capital employed calculation. The corporation protested these adjustments, but has not provided sufficient documentation for the Department of Revenue to analyze whether these adjustments should be altered or set aside.

In its protest, the taxpayer seeks to use 103 KAR 16:120 to apportion income, as it delivers goods both within and without Kentucky. However, the taxpayer cannot use this regulation, as it has all of its property and payroll in Kentucky, and is not entitled to apportionment pursuant to KRS 141.010(14)(a). Moreover, regulations cannot override a statute. KRS 13A.140(1).

After reviewing the available information and the applicable statutes, it is the position of the Finance and Administration Cabinet that the income and license tax assessments issued against the corporation for taxable periods ended August 31, 1999 and August 31, 2001 are valid liabilities due the Commonwealth of Kentucky.

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

