



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

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], LP

Contact:

[REDACTED], Inc.

FINAL RULING NO. 2010-28  
April 29, 2010

### FINAL RULING

#### Corporation Income Tax Penalty Assessment for Calendar Year Ended December 31, 2006

The Department of Revenue (the "Department") has issued a Corporation Income Tax penalty assessment against [REDACTED], LP (hereinafter "[REDACTED]") for the Calendar Year Ended (CYE) December 31, 2006 in the amount of \$[REDACTED]. The "paid late" penalty was assessed in accordance with KRS 131.180(2) and the "failure to furnish information" penalty was assessed in accordance with KRS 131.180(4). The following table provides a breakdown of the outstanding assessed penalties.

Tax Period	Paid Late Penalty	Failure to Furnish Information Penalty	Net Total Due
2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Department conducted a review of the taxpayer's 2006 Kentucky corporation income tax return. As a result, it was determined that the taxpayer failed to submit Schedule AMC, Kentucky Schedule K-1 and to submit payment with the return when it was filed.

The Department made a request in writing on ██████████, 2009 that the above referenced forms be submitted within 30 days from the date of the request. The Department made it clear that if additional time was needed, ██████████ should contact the Department.

On ██████████, 2009 the Department issued an assessment of the unpaid taxes and interest based on the information on hand. The Department also assessed a “paid late” penalty and a “failure to furnish information” penalty as a result of ██████████’s failure to timely pay the tax due and its failure to furnish the information requested by the Department in its ██████████, 2009 letter. On ██████████, 2009, the Department received and posted a payment in the amount of \$██████████ as a payment for the tax and interest due. On ██████████, 2009, ██████████ sent a protest letter to the Department disagreeing with the assessment of penalties and requesting that the Department waive the penalties for reasonable cause.

It is ██████████’s position that there is reasonable cause as defined by KRS 131.010(9) for waiver of penalties due to the fact that it was not notified of the outstanding tax due for over thirty (30) months. ██████████’s second argument is that “an event, happening, or circumstance entirely beyond the knowledge of the taxpayer” occurred in that the Department did not notify the taxpayer for over thirty (30) months that a balance was due.

It is the Department’s position that reasonable cause to waive the penalties has not been established. Firstly, the Department billed the taxpayer well within the four year statute of limitations established in KRS 141.210 for the examination and audit of the returns. KRS 141.210(2) provides in part:

As soon as practicable after each return is received, the department shall examine and audit it. If the amount of tax computed by the department is greater than the amount returned by the taxpayer, the additional tax shall be assessed and a notice of assessment mailed to the taxpayer by the department within four (4) years from the date the return was filed, except as otherwise provided in this subsection.

██████████’s argument erroneously implies that the language in KRS 131.010(9) applies to the actions of the Department when in fact it applies to the actions of the taxpayer. KRS 131.010(9) states:

“Reasonable cause” means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation.”

It is the Department's position that ██████████ did not exercise due care or prudence in the filing of its return because it should have known that the payment was not remitted with the return as it is the one charged with filing and paying the tax.

The penalties in question were properly calculated in accordance with KRS 131.180(2) and KRS 131.180(4), which provide:

(2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).

\* \* \* \* \*

(4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.

Based upon the available information and the applicable statutes, the outstanding "paid late" and "failure to furnish information" penalties are valid and due to 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 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