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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED]

FINAL RULING NO. 2010-31
May 6, 2010

Assessment of Corporate Income Tax
Tax Year 2006

FINAL RULING

The Kentucky Department of Revenue issued [REDACTED] Inc. ("the Taxpayer") a corporate income tax assessment for the taxable year 2006. This assessment was valid and paid in full. However, the late pay penalty issued the Taxpayer in accordance with KRS 131.180 remains outstanding. Many attempts were made by the Department of Revenue's Protest and Review Branch to contact the taxpayer by letter concerning this penalty without any response. The following table provides a breakdown of the amount of the late pay penalty as of the date of this final ruling.

TAX YEAR	PENALTY	TOTAL
2006	\$ [REDACTED]	\$ [REDACTED]
TOTALS	\$ [REDACTED]	\$ [REDACTED]

At issue, is whether this late pay penalty is a valid penalty for the 2006 corporate income tax assessment based upon the mandatory nexus consolidated filings pursuant KRS 141.200(9)

For Kentucky corporation income tax purposes, and in accordance with KRS 141.040 (1), for all taxable years beginning after December 31, 2004 and ending before January 1, 2007, every corporation doing business in this state, except those corporations listed in paragraphs (a) to (i) of this subsection, shall pay for each taxable year a tax to be computed by the taxpayer on taxable net income or the alternative minimum calculation under this at the rates specified in this section.

In accordance with KRS 141.040 (5) “for taxable years beginning after December 31, 2004 and before January 1, 2007, corporations subject to the tax imposed by [KRS 141.040 (1)] shall pay the greater of the tax computed under paragraph (a) of this subsection, the tax computed under paragraph (b) 1 or 2 of this subsection, or the minimum tax imposed by subsection (7) of this section.” The tax computed under paragraph (b) 1 or 2 of this subsection is more commonly known as the alternative minimum calculation. As indicated above, the Taxpayer paid the tax and interest assessed and a penalty for failure to pay the estimated tax was waived due to a change in filing method.

The Taxpayer was assessed a late pay penalty in accordance with KRS 131.180 for 2006. For 2006, the taxpayer was assessed a late pay penalty in accordance with KRS 131.180. The aforementioned penalty is a valid penalty assessment in accordance with KRS 131.180 (2), which states:

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).

The Taxpayer asserts that its “failure to pay all taxes when due to your state was not due to gross or willful neglect, nor to disregard of the regulations, or instructions issued pursuant to the law” and that its “policy is to consistently file accurate and timely returns and to make timely payment of all taxes due” It does not deny that the tax in question was not paid when due. The Taxpayer’s general assertions do not support or justify waiver of the penalty in question. It has not offered anything else that would warrant justifying waiver of this penalty.

Based upon the available information, and the applicable statutes, the outstanding late pay penalty issued against ██████████, Inc. for the tax year 2006 is a valid liability due the Commonwealth of Kentucky, and its protest is hereby 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 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

A handwritten signature in black ink that reads "E. Jeffrey Mosley". The signature is written in a cursive style with a long, sweeping underline.

E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue