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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

██████████ Corporation

Contact:

██████████

██████████ Corporation

██████████

FINAL RULING NO. 2010-45
August 5, 2010

FINAL RULING

Corporation Income Tax Refund Claim Denied For the December 31, 2001 Tax Period.

The Kentucky Department of Revenue has denied a refund claim for the December 31, 2001 tax period. ██████████ Corporation (hereafter "██████") filed an amended return on ████████, 2008 seeking a refund in the amount of \$ ████████.

At issue in this dispute is whether the statute of limitations for claiming a tax refund for the tax year ending December 31, 2001 had expired prior to the filing by ████████ of an amended return dated ████████, 2008 seeking a refund which was the result of a federal audit.

It is ████████'s position that the federal audit concluded on ████████, 2008. This is based on the contention that ████████ signed federal Form - 872, "Consent to Extend the Time to Assess Tax." Section 2 of this form gives the party giving its consent six (6) months to file a claim for a refund or credit. By signing this form, ████████ asserts that the conclusion of its federal audit occurred when this six month period for filing its federal refund claim expired.

Federal law distinguishes between the deadline to challenge an audit and the time to file a refund claim. Smith v. United States, 328 F.3d 760 (5th Cir. 2003). The Form 872 signed by ████████ determines both of these dates. The assessment in question was issued by the IRS on ████████, 2006; thus, the deadline for challenging the federal audit was 120 days after ████████, 2006, or ████████, 2006. ████████ did have an additional six months from that time to request a federal refund. But clearly the results of the audit were final and unappealable as of ████████, 2006.

Even though ██████ had the right to request a refund after that time, it could no longer challenge the findings of the audit. The audit was therefore final, and concluded, as of ██████, 2006.

██████ had six months from the date the federal audit was final to file a refund claim with the Department. KRS 141.235(2)(b) states: “If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the taxpayer shall file a claim for refund or credit within the time provide for it in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.” Therefore the latest possible date for filing a Kentucky refund claim was six months from ██████, 2006 – i.e., on or before ██████, 2007. ██████’s amended return was filed on ██████, 2008, over fourteen months past this deadline.

After reviewing all of the available information, statutes and regulations, it is the position of the Department of Revenue that ██████’s refund claim in the amount of \$██████ was properly 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.

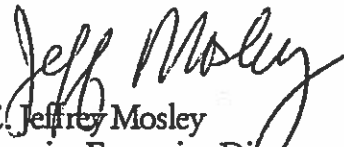
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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 2 (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 filling of the petition of appeal; and
4. 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


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services

412041 AUG 5, 2010 ACT WT 0.1 LBS #PK 1
SVC GNDCOM BL WT 1.0 LBS
TRACKING# 1Z4120410340664504 ALL CURRENCY USD
0107514 SSB SUPPLIES & FORM'S
REF 2:

HANDLING CHARGE	0.00	FRT: SHP	
SHIPMENT CCC RATE CHARGES:		SVC	5.29 USD
DV	0.00	COD	0.00
DC	0.00	DGD	0.00
AH	0.00	PR	0.00
TOT CCC CHG	5.29	ROD	0.00
		CCC+HANDLING	5.29