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LORI HUDSON FLANERY
Secretary

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Commissioner

In the matter of:

██████████ LLC

Contact: ██████████ LLC

Attn: ██████████
██████████

Final Ruling No. 2011-96
December 21, 2011

Denial of Refund Claims of Interest, Penalties and Cost of
Collections Fees for the 2005 and 2006 Tax Years

FINAL RULING

The Kentucky Department of Revenue (the "Department") issued assessments of interest, penalties and cost of collection fees to ██████████ LLC ("the Taxpayer") for the taxable years 2005 and 2006. The Taxpayer paid the assessments in full but subsequently filed amended returns seeking refunds of the interest, penalties and cost of collection fees paid. The following table provides a breakdown of the interest, penalties and cost of collection fees paid by the Taxpayer for which it now seeks refunds:

Taxable Years	Interest	Penalties	Cost of Collection Fees	Total
2005	██████████	██████████	██████████	██████████
2006	██████████	██████████	██████████	██████████
Total	██████████	██████████	██████████	██████████

At issue is the Department's denial of the Taxpayer's refund requests or claims outlined above.

Interest was applied in accordance with KRS 131.183(1) which states in part:

- (a) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.
- (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent as adjusted by subsection (2) of this section.
- (c) The commissioner of revenue shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the immediately succeeding year.

The penalties in question were applied in accordance with KRS 131.180(2) which states in part:

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 cost of collection fee was applied in accordance with KRS 131.440(1) which states in part:

In addition to all other penalties provided under KRS 131.180, 131.410 to 131.445, and 131.990 and any other law, there is hereby imposed after the expiration of the tax amnesty period the following cost of collection fees:

- (a) A cost of collection fee of twenty-five percent (25%) on all taxes which are or become due and owing to the department for any reporting period, regardless of when due. This fee shall be in addition to any other applicable fee provided in this subsection;

It is the Taxpayer's position that it does not owe the interest, penalties and fees and those payments should be refunded.

The Department requested information regarding the 12/31/2005 return on ██████████, 2007. Follow up letters were sent on ██████████, 2008, ██████████, 2008 and ██████████, 2008. On ██████████, 2008, the requested information was received. A notice of tax due, with paid late penalties and interest was generated. Similarly, for the 12/31/2006 return, a notice of tax due, with paid late penalties and interest was generated. As a result, the total amount of tax for the 12/31/2005 and 12/31/2006 returns was not paid when originally due, as the balance of the assessment was paid several years later. Furthermore, information reveals that, via a levy from the Taxpayer's bank account, the above referenced assessments were paid late. Based on the facts and circumstances of this case, it is the Department's position that the applicable interest, penalties and fees were properly assessed.

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED