



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

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[Redacted], Inc.

Contact: [Redacted]
[Redacted], Inc.

FINAL RULING NO. 2012-03
January 6, 2012

Denial of Refund Claims Due to Assessments of Additional
Tax and Interest Due Caused by the Reduction of the
Recycling Credits for the 2007 and 2008 Tax Years

FINAL RULING

The Kentucky Department of Revenue (the "Department") has partly denied a refund to [Redacted], Inc. ("the Taxpayer") for the taxable period ended December 31, 2008 (2008) due to reductions made by the Department to the Credits for the taxable periods ended December 31, 2007 (2007) and December 31, 2008 (2008) in accordance with Kentucky Revised Statute (KRS) 141.0205. The following table summarizes the amount by which the Taxpayer's 2008 refund was reduced to pay the additional tax and interest due caused by the partial disallowance of Recycling Credits by the Department.

TAX PERIODS AND AMOUNTS

Taxable Period	Tax	Interest	Totals
2007	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
2008	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
		TOTAL	\$ [Redacted]

At issue is the Department's partial denial of the Taxpayer's 2008 refund request or claim as outlined above caused by the reduction to the Recycling Credits for 2007 and 2008.

KRS 141.390(2)(a) states:

A taxpayer that purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste materials shall be entitled to a credit against the income taxes imposed pursuant to this chapter, including any tax due under the provisions of KRS 141.040, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. Any credit allowed against the income taxes imposed pursuant to this chapter shall also be applied against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.

The Recycling Credits were adjusted by the Department in accordance with KRS 141.0205 which provides for the priority application and use of tax credits and states in part:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

...

(4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.

(5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

...

(e) The recycling or composting equipment credit permitted by KRS 141.390;

It is the Taxpayer's position that the base for the calculation of the Recycling Credit to be applied against Income Tax is derived by taking the sum of the Income Tax liability and the Limited Liability Entity Tax (LLET) and subtracting the LLET Credit.

It is the Department's position that the Recycling Credit is first utilized against the LLET as provided in KRS 141.0401(3) which is in accordance with KRS 141.0205(5).

KRS 141.0401(3) states:

A nonrefundable credit based on the tax calculated under subsection (2) of this section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The credit amount shall be determined as follows:

(a) The credit allowed a corporation subject to the tax imposed by KRS 141.040 shall be equal to the amount of tax calculated under subsection (2) of this section for the current year after subtraction of any credits identified in KRS 141.0205, reduced by the minimum tax of one hundred seventy-five dollars (\$175), plus any credit determined in paragraph (b) of this subsection for tax paid by wholly or partially owned limited liability pass-through entities. The amount of credit allowed to a corporation based on the amount of tax paid under subsection (2) of this section for the current year shall be applied to the income tax due from the corporation's activities in this state. Any remaining credit from the corporation shall be disallowed.

Based upon the foregoing, the LLET is first reduced by the Recycling Credit and then by the minimum \$175 to calculate the nonrefundable LLET credit, to be later applied against the Income Tax liability. Once the nonrefundable LLET credit has been derived, KRS 141.0205 must be referenced to ensure the various credits are applied against the Income Tax liability in the correct order. In accordance with KRS 141.0205(4), the Income Tax liability is first reduced by the nonrefundable LLET credit. Subsequently, in accordance with the first part of KRS 141.0205(5), the Recycling Credit should be applied against Income Tax after subtracting the nonrefundable LLET credit. In accordance with the second part of KRS 141.0205(5), the Recycling Credit has already been calculated and utilized against the LLET as explained previously on page 2.

It is the Department's position that the Taxpayer has been allowed the full amount of Recycling Credit against their LLET liability and against their Income Tax liability as reflected in the adjusted notices. The Department deems the Taxpayer's interpretation of a small portion of a larger statute to be inaccurate. To correctly comprehend KRS 141.0205, the statute must be reviewed in its entirety. The reduction of Income Tax by the nonrefundable LLET credit takes precedence over the application of the Recycling Credit and is in fact listed in a separate and earlier portion of the statute. The Taxpayer's interpretation of KRS 141.0205(5) combines the Income Tax liability and LLET liability then subtracts the nonrefundable LLET credit, which fails to take into account that the Income Tax liability has already been reduced by the

nonrefundable LLET credit per KRS 141.0205(4). Therefore the Taxpayer's interpretation is incorrect when taking into account KRS 141.0205(4) and (5). KRS 141.0205(5) allows the Recycling Credit to be applied against the Income Tax liability after the Income Tax liability has been reduced by the nonrefundable LLET credit; and also allows the Recycling Credit to be applied against LLET

For the reasons stated above, the Department has determined that the adjustments made to the Recycling Credits for 2007 and 2008 are correct. Therefore, the Department's denial of the 2008 refund of \$ ██████████ and all adjustments to the Recycling Credits for the tax years in question are hereby upheld.

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.

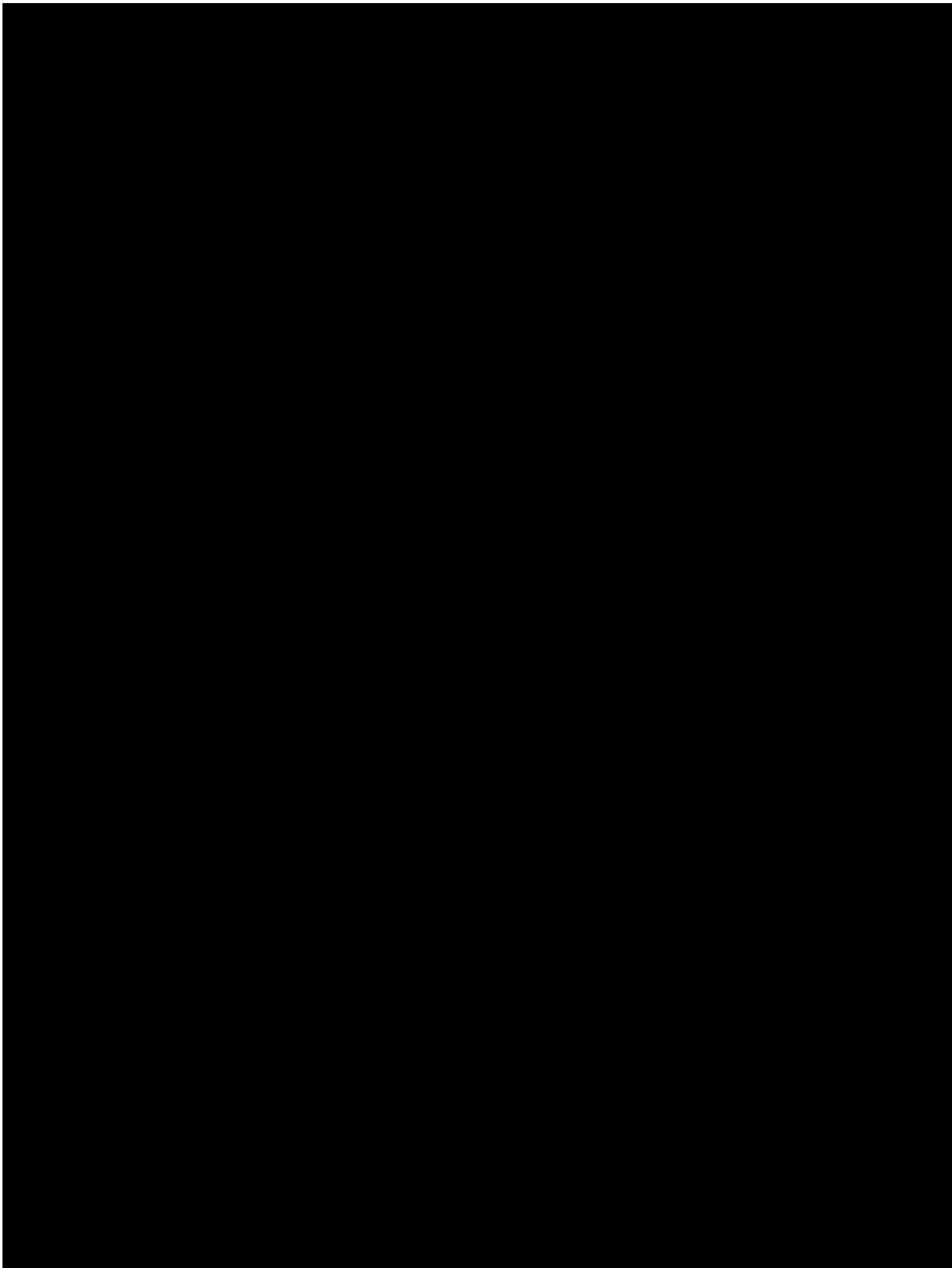
You will be notified by the Clerk of the Board of the date and time set for any hearing.

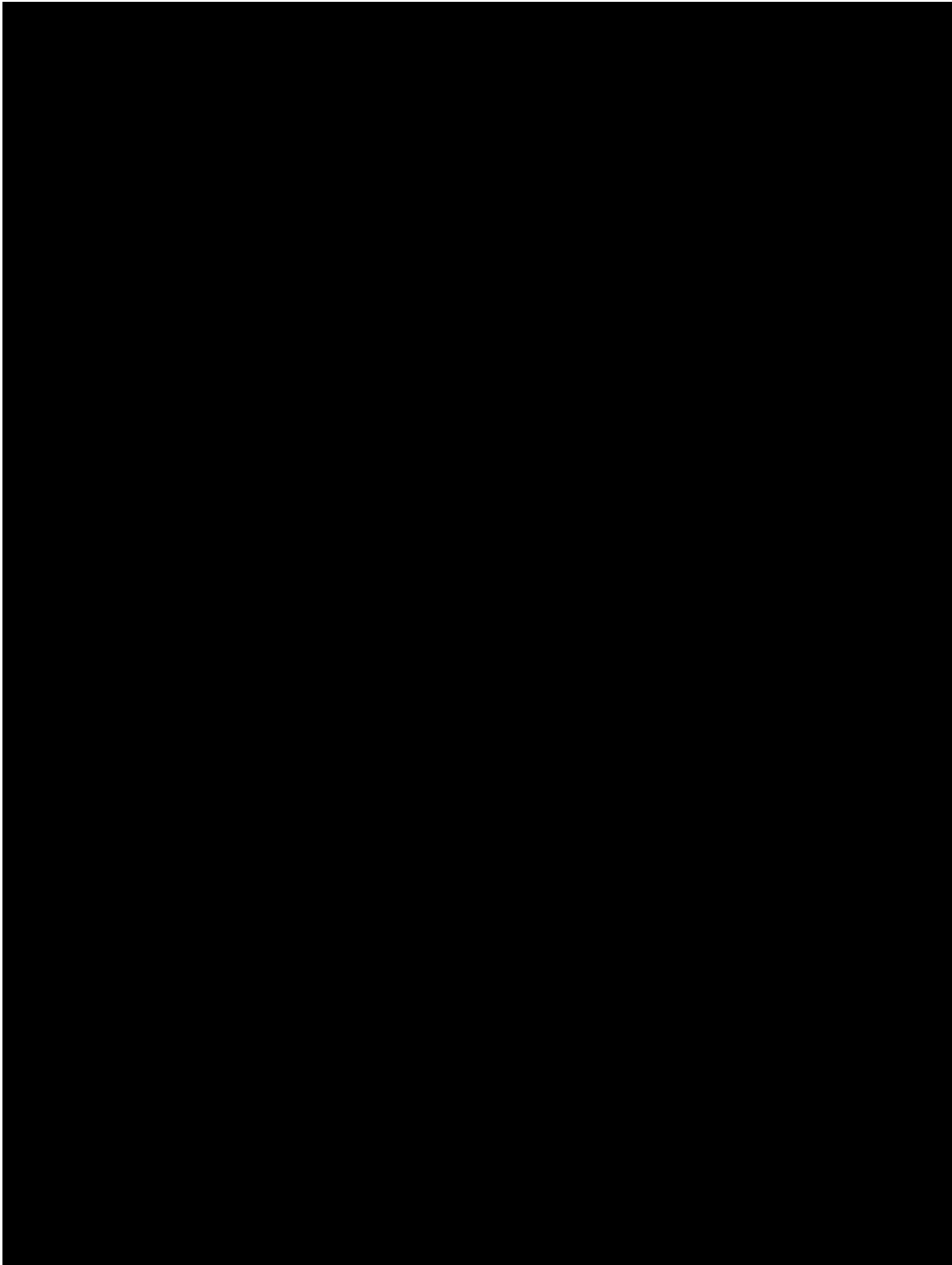
Sincerely,
FINANCE AND ADMINISTRATION CABINET

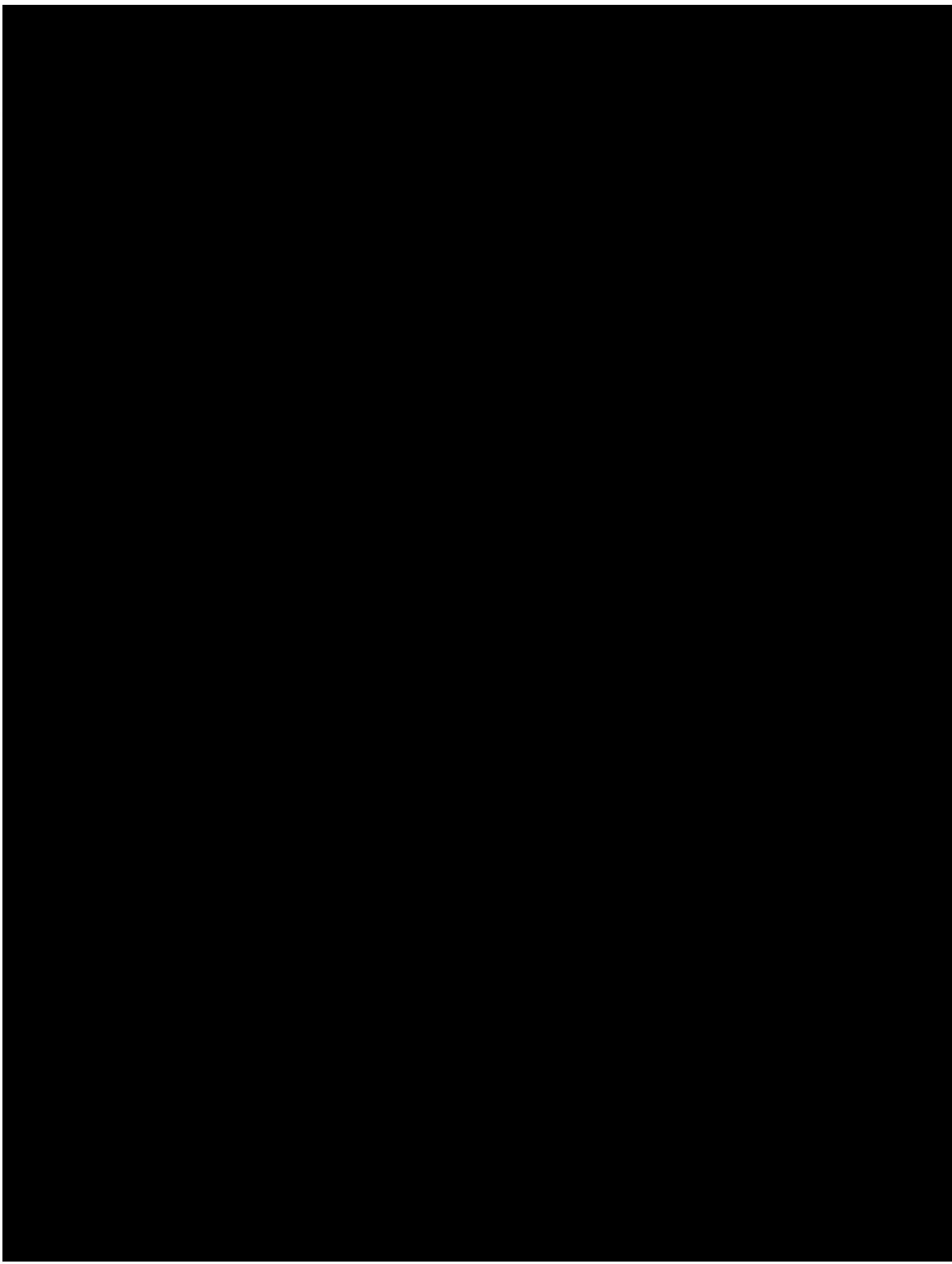


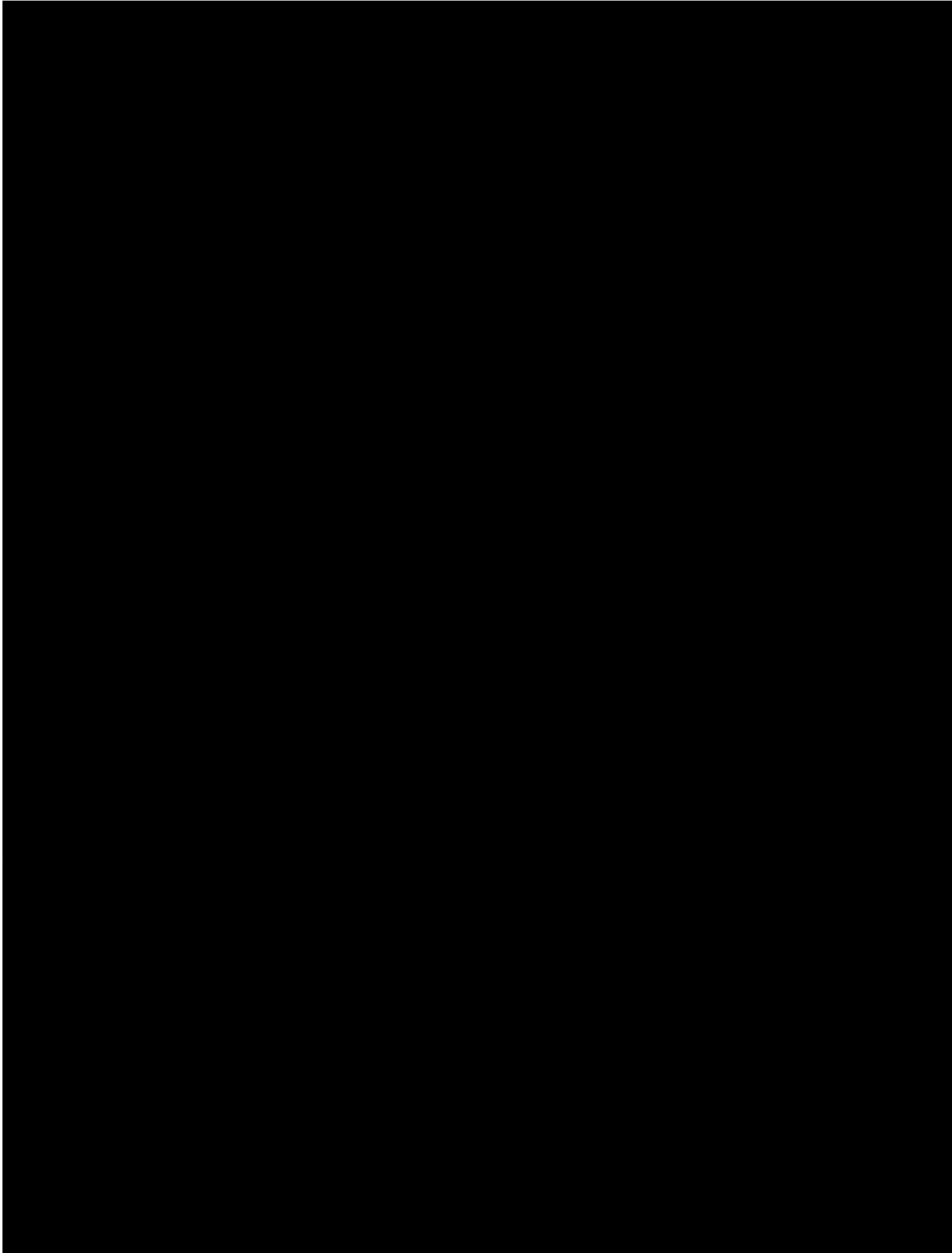
E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED









The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt, invoice, and bill should be properly filed and indexed for easy retrieval. This not only helps in tracking expenses but also ensures compliance with tax regulations.

Next, the document outlines the various methods used to collect and analyze data. It mentions the use of surveys, interviews, and focus groups to gather qualitative information. Additionally, it highlights the importance of using statistical tools to analyze quantitative data, such as regression analysis and correlation coefficients.

The document also touches upon the ethical considerations of research. It stresses the need for transparency in reporting results and the importance of obtaining informed consent from participants. Furthermore, it discusses the potential biases that can arise in data collection and how to mitigate them through careful planning and execution.

In conclusion, the document provides a comprehensive overview of the research process, from data collection to analysis and reporting. It serves as a valuable resource for anyone looking to improve their research methodology and produce more reliable and valid results.

