



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED], Inc.

FINAL RULING NO. 2012-39
June 13, 2012

Assessment of Kentucky Corporate Income Tax
Taxable Year 2005

FINAL RULING

The Kentucky Department of Revenue (the "Department") issued [REDACTED], Inc. ("the Taxpayer") a corporate income tax assessment for the taxable year 2005. The 2005 corporate income tax assessment remains outstanding. The following table provides a breakdown of the assessment, including penalty and accrued interest as of the date of this final ruling:

TAX YEAR	TAX	INTEREST	PENALTY	TOTAL
2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue is whether the Department correctly assessed the Taxpayer additional corporate income tax based on the available information. The Taxpayer is a service company and claimed a deduction for cost of goods sold in computing the alternative minimum ("AMC") tax. But the Department disallowed such a deduction because the Taxpayer is a service company and it has not been engaged in business that makes, buys, or sells goods to produce income. Therefore, the Taxpayer could not take the cost of goods sold deduction from the gross receipts while computing the AMC tax.

KRS 141.0401(1)(d) states:

“cost of goods sold“ means: 1. Amounts that are: a. Allowable as cost of goods sold pursuant to the Internal Revenue Code and any guidelines issued by the Internal Revenue Service relating to cost of goods sold, unless modified by this paragraph; and b. incurred in acquiring or producing the tangible product generating the Kentucky gross receipts.

In addition, KRS 141.0401(1)(d)(3)states:

for any activity other than manufacturing, producing, reselling, retailing, or wholesaling, no costs shall be included in cost of goods sold.

The Taxpayer is a company selling an intangible product and therefore cannot compute cost of goods sold and gross profits for purposes of computing AMC tax, even if allowed by the Internal Revenue Code. KRS 141.0401(2) and (3) not only limit cost of goods sold to tangible products, but limits it to tangible products for manufacturing, producing, reselling, retailing and wholesaling activities. Any other activities, even if tangible products are involved, are not eligible to compute cost of goods sold and gross profits for purposes of computing AMC tax.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because of the Taxpayer's failure to have timely paid at least 75% of the tax determined to be due by the Department. The Taxpayer has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, based upon the available information, and the applicable statutes, the outstanding tax, interest and penalty issued against the Taxpayer for the taxable year 2005 is a valid liability due the Commonwealth of Kentucky. The Taxpayer's 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



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED











