



ERNIE FLETCHER
GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
www.kentucky.gov

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[Redacted] Company
[Redacted], Inc.
[Redacted], Inc.
[Redacted], Inc.
[Redacted], Inc.

Contact: [Redacted] PLLC
[Redacted]

Final Ruling No. 2005-49
September 9, 2005

Corporation license tax denied refunds
for tax years 1988 through 1991

FINAL RULING

The Kentucky Department of Revenue (successor to the Kentucky Revenue Cabinet) has received a refund request from the Corporations. The following table provides a breakdown of the amount of the alleged requested refund for each of the Corporations. Interest on the alleged refund to date is \$ [Redacted].

ALLEGED REFUND:

Tax Year	[Redacted]	[Redacted]	[Redacted] Inc	[Redacted] Inc	[Redacted] Inc.	Total
1988	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
1989	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
1990	(\$ [Redacted])	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
1991	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
Totals	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]

On ██████████, 1993, taxpayers were audited for the years ended December 31, 1988 through December 31, 1991. The taxpayer had originally filed on a combined filing basis and filed as a 100% Kentucky Corporation. For audit purposes, the Corporations were decombined into separate return audits. The taxpayer filed a timely protest of the Cabinet's adjustments and filed amended returns requesting an alleged license tax refund which totaled \$██████████. A Corporation License Tax Refund for \$██████████, plus applicable interest, was issued to the Corporation. This refund represented the apportionment factor changes as requested in the Corporation's amended returns.

The disputed \$██████████ refund involves the moneys borrowed for inventory deduction amount requested by the taxpayer.

KRS 136.070(2) (a) provides:

The term "capital" as used in this section means capital stock, surplus, advances by affiliated companies, intercompany accounts, borrowed moneys or any other accounts representing additional capital used and employed in the business. Accounts properly defined as "capital" in this section shall be reported at the value reflected on financial statements prepared for book purposes as of the last day of the calendar or fiscal year;

The above cited statute states that borrowed moneys are to be included in capital employed, without any provision for purchases of inventory. However, a decision was made and a policy put in place to allow borrowed moneys to be excluded from capital employed if evidence acceptable to the Department of Revenue was presented to show that the moneys were borrowed directly to finance inventory. In order for the Corporation to be entitled to the exclusion, the borrowed moneys must have actually been used to finance the purchase of inventory. To claim the exclusion, the Corporation needs to submit a copy of the loan agreement or other document executed at the time the line of credit was established. The Corporation has submitted two (2) different schedules disclosing the Monies Borrowed for Inventory calculations but has not explained either of the (2) different calculations nor why there is a discrepancy between the two (2). The taxpayers cite KRS 136.076; however, the issue here is a denial of a refund claim, based upon taxpayers' filing of amended returns, and not an assessment of additional tax due.

It should be noted that the Kentucky Board of Tax Appeals has ruled that the borrowed moneys policy is void because it is not authorized by statute. Dana Corporation v. Revenue Cabinet, File No. K01-R38. While this order is not yet final, the effect it would have is that no exemption or deduction would be allowed for any moneys borrowed to finance inventory.

Based on the above, the Cabinet denies the formal refund request from the Corporations.

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 40602-2120, 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 hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. 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.

[REDACTED] Company, [REDACTED], Inc.,
[REDACTED], Inc., [REDACTED], Inc. & [REDACTED], Inc.
September 9, 2005 – Final Ruling No. 2005-49
Page 4

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

