



ERNIE FLETCHER
GOVERNOR

OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
(502) 564-6785 FAX

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED], Inc.
[REDACTED]

FINAL RULING NO. 2006-04
February 13, 2006

Denial of amended refund claims of Corporation License Tax
for 12/31/1998 through 12/31/2002
for monies borrowed for inventory and deferred taxes payable

FINAL RULING

The Kentucky Department of Revenue has denied your amended refund claims for calendar years ended 12/31/1998 through 12/31/2002 for Monies Borrowed for Inventory and Deferred Taxes Payable \$ [REDACTED].

Tax Year	Amended Refund Requested	Refund Received	Refund Denied
1998	[REDACTED]	[REDACTED]	[REDACTED]
1999	[REDACTED]	[REDACTED]	[REDACTED]
2000	[REDACTED]	[REDACTED]	[REDACTED]
2001	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED], Inc. filed amended refund requests for the aforementioned years for monies borrowed for inventory and deferred taxes payable which were denied under KRS 136.070(2) which states:

“Accounts properly defined as ‘capital’ in this section shall be reported at the value on financial statements prepared for book purposes as of the last day of the calendar or fiscal year.”

The provisions of KRS 136.070 do not allow a restatement of financial reports due to error. Any adjustments required after the end of the tax year are made through retained earnings of the current year.

Accounts identified as deferrals are included in the definition of capital employed in KRS 136.070(2) under the part of the definition....”any other accounts representing additional capital used employed in the business.” Also in the case styled The Kroger Company v. Department of Revenue, Commonwealth of Kentucky, et.al., which dealt with whether deferred federal taxes should be included in capital employed, the court stated that the Legislature had included the term “surplus” in capital employed. Surplus is defined as “an excess of the net worth of a corporation over the par of stated valued of its capital stock.” The court emphasized: “we are dealing with state license tax and the measurement of the value of capital employed in the taxpayer’s business in a given year. That measurement must be based on the taxpayer’s operations in future year or years.

Therefore, the deferred items must be included in the license tax computation.

The Division of Protest Resolution maintains that the amounts allowed for the monies borrowed for inventory exclusions are correct. Currently, there is a court case being litigated involving the monies borrowed for inventory issue. The case is Dana Corporation v. Revenue Cabinet, File No. K01-R-38. The Kentucky Board of Tax Appeals ruled that the borrowed monies policy is void because it is not authorized by statute. While this order is not yet final, the effect it would have is that no exemption or deduction would be allowed for any monies borrowed to finance inventory.

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.

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

