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FINANCE AND ADMINISTRATION CABINET
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

██████████, INC.

Contact: ██████████ CPA, PSC
██████████, CPA

FINAL RULING NO. 2006-16
April 7, 2006

Corporation license tax assessments for
taxable periods ending September 30, 1999 through September 30, 2001

FINAL RULING

The Kentucky Department of Revenue (successor to the Kentucky Revenue Cabinet) has issued corporation license tax assessments against ██████████, Inc. (██████████) for the fiscal years ending September 30, 1999 through September 30, 2001 totaling \$██████████, plus applicable interest. The following table provides a breakdown of the amount of tax due, as well as accrued interest as of the date of this final ruling.

Tax Year	Tax Due	Interest	Penalties	Total
FYE 9/99	\$██████████	\$██████████	\$██████████	\$██████████
FYE 9/00	\$██████████	\$██████████	\$██████████	\$██████████
FYE 9/01	\$██████████	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████	\$██████████

The above referenced assessments were based on an office audit examination conducted by auditors from the Department of Revenue's Division of Corporation Tax. The assessments included adjustments to ██████████'s capital employed license tax calculation and are based on information obtained from the corporate records and the Kentucky Corporation Income and

License Tax Returns, Kentucky Form 720, filed for the taxable years ended September 30, 1999 through September 30, 2001. ██████████ is a Kentucky Corporation based in ██████████ Kentucky. ██████████ is a grain merchant that purchases grain from farmers.

At issue is the adjustment to capital involving the moneys borrowed for inventory deduction not allowed by the Department of Revenue.

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 statute states that borrowed moneys are to be included in capital employed, without any provision for purchases of inventory. In addition, the Kentucky Board of Tax Appeals has ruled in Dana Corporation v. Revenue Cabinet, File No. K01-R38, that the borrowed moneys policy is void because it is not authorized by statute. While this order is not yet final, the result is that no exemption or deduction is allowed against capital for moneys borrowed to finance inventory.

However, even if the moneys borrowed for inventory deduction is allowed, ██████████ must show that the borrowed moneys were actually used to finance the purchase of inventory. If the borrowed moneys were indeed used for the purchase of inventory, then the proceeds from the sale of the inventory should be used to pay off the loan. When this does not occur, the borrowed moneys are no longer being used to finance inventory. Therefore, the moneys borrowed cannot exceed ending inventory. Based on calculations utilizing ██████████'s ending inventory, ██████████ would still have an outstanding license tax assessment of \$ ██████████, plus applicable interest.

After reviewing the available information and the applicable statutes, it is the position of the Department of Revenue that the license tax assessments issued against ██████████ for taxable periods ending September 30, 1999 through September 30, 2001 are valid liabilities due the Commonwealth of Kentucky.

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

