

beginning before January 1, 2003), the Department shall provide appropriate refunds or set aside assessments where a corporation was denied the use of KRS 136.071 solely because of the lack of a Kentucky commercial domicile. For this relief to be granted, the Court also ruled that *those corporations seeking relief under this decision must demonstrate that they were entitled to invoke the provisions of KRS 136.071 but for lack of a Kentucky commercial domicile and that they have satisfied all legal and procedural requirements relating to refunds or the protest of assessments* [emphasis added], including the requirement that a refund claim must be timely filed under KRS 134.590.

KRS 136.071 provides: “Notwithstanding any other provisions of this chapter, a corporation whose commercial domicile is in this state and holds directly or indirectly stock or securities in other corporations equal to or greater than fifty percent (50%) of *its* [emphasis added] total assets.” The dispute between the Department and the Corporation is how the ratio of “holds directly or indirectly stock or security in other corporations” to total assets (the “Ratio”) is determined.

A review of the original returns and financial statements for the years in question was made to determine if the Corporation satisfied all legal and procedural requirements relating to refunds in accordance with KRS 136.071. Based upon these documents, the Department computed the Ratio as follows:

	July 31, 2002	
	Investment in other Corporations	Total Assets
██████████ Inc.		
██████████ Inc.		
██████████ Corp		
Ratio		██████████%

	July 31, 2003	
	Investment in other Corporations	Total Assets
██████████ Inc.		
██████████ Inc.		
██████████ Corp		
██████████		
Ratio		██████████%

The Department determined that the Corporation failed to qualify to take the deduction because, based on the original returns and financial statements, it did not hold directly or indirectly stock or securities in other corporations equal to or greater than 50% of its total assets. The Corporation filed its returns on a separate company basis, but wants its

calculation of the deduction made on a consolidated basis, which is not allowed. The calculation must be made on the basis of its separate company financial statements.

The Corporation's protest letter, dated ██████████, 2005, asserts that investments in other corporations not found on the Corporation's financial statements should be used in determining the Ratio. Those investments were in ██████████, Inc.; ██████████, Inc.; ██████████, Inc.; & ██████████, Inc. However, license tax is based upon the corporation's financial statements at the time the original return was filed, and is measured by the taxpayer's operations in that year. Kroger Co. v. Department of Revenue, 614 S.W.2d 705, 707-709 (Ky. App. 1981).

Since the Corporation does not hold directly or indirectly stock or securities in other corporations equal to or greater than 50% of *its* total assets, it cannot take the deduction and the refund claims for the periods stated above have been denied. This letter is the final ruling of the Department.

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,
DEPARTMENT OF REVENUE



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



