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Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE

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JOHN MAY  
Commissioner

In the matter of:

██████████, INC.

Contact: ██████████  
██████████ Corporate Taxes

FINAL RULING NO. 2007-43  
August 30, 2007

Corporation license tax assessment for the  
December 31, 2001 tax period

**FINAL RULING**

The Kentucky Department of Revenue (successor to the Kentucky Revenue Cabinet) has issued an assessment for the above stated period for tax deficiency against ██████████, Inc. (██████). The following table provides a breakdown of the amount of the corporation license tax assessed and applicable accrued interest as of August 29, 2007.

Year	Tax	Interest	Penalty	Total
2001	██████████	██████████	██████████	██████████

At issue is whether ████████ received a timely notice of assessment under KRS 136.076 and whether the notice complied with KRS 131.081(8).

The Department of Revenue audited ████████'s license tax return for the above stated year in question. ████████ is not in disagreement with the Department of Revenue's (DOR) calculation of capital employed for the 2001 tax period. Also, ████████ has not protested the method of the audit. The scope of the audit was to determine the correct calculation of capital employed in accordance with KRS 136.070.

An authorized agent of ████████ signed a waiver that extended the time for assessment of additional tax to April 15, 2007. The Division of Protest Resolution (Division) sent ████████ a notice of assessment on April 13, 2007 which was timely under this extension. ████████ stated in a conference

held on ██████████, 2007, that it had in fact received this notice sent by the Division on ██████████, 2007. It is ██████████'s position that the notice the Division sent on ██████████, 2007 is not a notice in accordance with KRS 136.076. KRS 136.076(1) provides:

As soon as practicable after each return is received, the department shall examine and audit it. If the amount of tax computed by the department is greater than the amount returned by the taxpayer, the additional tax shall be assessed and a notice of assessment mailed to the taxpayer by the department within four (4) years from the date the return was filed, except that in the case of a failure to file a return, or of a fraudulent return, the additional tax may be assessed at any time. The time provided in this section may be extended by agreement between the taxpayer and the department.

The notice sent to ██████████ on ██████████, 2007 complied with both KRS 136.076 and KRS 131.081(8). It apprized ██████████ of the additional amount of tax assessed and was mailed within the time extended by agreement between ██████████ and the DOR.

KRS 131.081(8) provides:

The department shall include with each *notice* of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit work papers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.

On ██████████, 2006, ██████████ was sent a letter from the Division of Field Operations of the Department of Revenue confirming the date of a pending audit of ██████████'s income and license tax returns for the 2001 through 2004 tax years. Provided with that letter was a brochure entitled Your Rights as a Kentucky Taxpayer.

On ██████████, 2007, ██████████ was sent notice of the outcome of the field audit. In this letter, ██████████ was notified that a notice of tax due would be forthcoming within five (5) days. A notice dated ██████████, 2007 was sent to ██████████ within the time extended.

Included with the ██████████, 2007 notice were the agent's narrative and field audit work papers detailing the adjustments made and the tax deficiency as a result of the adjustments. In this notice, it stated that the protest must be submitted in writing postmarked no later than forty-five (45) days from the notice date.

Even if the facts presented reflected some non-compliance with KRS 131.081(8), that would not warrant the setting aside or voiding of the assessment. The remedy would instead consist of a proceeding under KRS 131.081(14).

The Department of Revenue complied with both KRS 131.081(8) and KRS 136.076. Therefore, the assessment reflected by the notice is a legitimate liability of ██████████ Inc. to 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.

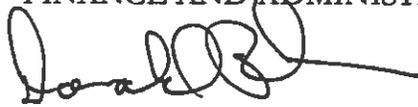
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

A handwritten signature in black ink, appearing to read "Don Guier", with a long horizontal stroke extending to the right.

DON GUIER  
Executive Director  
Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

