



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████, INC.

Contact: ██████████, Inc.
ATTN: ██████████
██████████

FINAL RULING NO. 2015-46
November 13, 2015

Assessment of Corporation Income Tax
for the Tax Year Ended February 2, 2013

FINAL RULING

The Kentucky Department of Revenue (“the Department”) has issued a corporation income tax assessment against ██████████, Inc. (“the Taxpayer”) resulting from an adjustment to the Taxpayer’s consolidated group for the tax year ended February 2, 2013. The following table provides a breakdown of the amount of tax due, all assessed penalties, as well as accrued interest as of the date of this final ruling:

TAX YEARS	TAX	INTEREST	PENALTIES	TOTAL
2012	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

The taxpayer has filed a mandatory nexus consolidated return that included the subsidiaries ██████████, Inc. (“██████████”) and ██████████, Inc. (“██████████”). For taxable year ended ██████████, 2013, ██████████ and ██████████ did not have any sales, property, or payroll in Kentucky.

The Taxpayer claims that ██████████ and ██████████ should be included as part of the mandatory nexus consolidated return because both are legal entities that are registered to do business in Kentucky. The Taxpayer also claims that based on KRS 141.120(10)(b), since both entities had numbers in their denominators for property, payroll, and sales, ██████████ and ██████████ should be includible as subsidiaries. The Department disagrees with the Taxpayer's position. KRS 141.200(11) provides that "[a]n affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations." Includible corporation "means any corporation doing business in the state except . . . "[a]ny corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to KRS 141.120(8) are de minimis" and "[a]ny corporation for which the sum of the property, payroll and sales factors described in KRS 141.120(8) is zero." KRS 141.200(9)(e)(7) and (8).

In Kentucky, the numerator for the payroll factor is determined by the amount "paid or payable in this state during the tax period by the corporation for compensation." KRS 141.120(8)(b). In order for compensation to be paid or payable in Kentucky, KRS 141.120(8)(b) requires that the individual's service be performed entirely within Kentucky; or if the individual's service is performed both within and without Kentucky, the base of operations must be in Kentucky, the individual must be a resident of Kentucky, the services must be directed and controlled from Kentucky, or the services in the other states must be incidental. *See also* 103 KAR 16:090, Section 2.

During the taxable period, ██████████ and ██████████ did not have payroll located in Kentucky. As such, their Kentucky payroll factors under KRS 141.120(8) are zero.

Also, ██████████ and ██████████ did not have any property in Kentucky during the taxable years in question. As such, their Kentucky property factors under KRS 141.120(8) are zero.

Finally, the numerator for the sales factor in Kentucky "is the total sales of the corporation in this state during the tax period." KRS 141.120(8)(c)(1). "Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance." KRS 141.120(8)(c)(3).

During the taxable period, ██████████ and ██████████ did not have any sales in Kentucky. As such, their Kentucky sales factors are zero.

Interest will accrue on the assessment for the tax year ended ██████████, 2013, until the tax is paid. See KRS 141.220; 141.985; 131.183; 103 KAR 15:050 § 4. The Taxpayer is also liable for a penalty attributable to the failure to pay the tax due for the tax year ended ██████████, 2013. KRS 131.180(2).

After reviewing the available information, and the applicable statutes, it is the position of the Department that the outstanding corporation income tax assessment issued to ██████████ ██████████, Inc. for tax year ended ██████████, 2013, is valid.

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 40601-3714, 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 3 of 802 KAR 1:010:

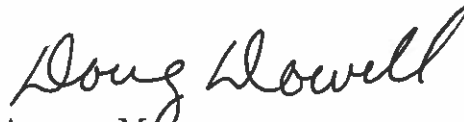
1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and

4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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,

DEPARTMENT OF REVENUE



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED