



MATTHEW G. BEVIN
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

WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

[REDACTED], LLC

Contact: [REDACTED], LLP

ATTN: [REDACTED]
[REDACTED]

FINAL RULING NO. 2015-55
December 18, 2015

Assessment of Corporation Income Tax
for the Tax Year Ended September 28, 2013

FINAL RULING

The Kentucky Department of Revenue ("the Department") has issued a corporation income tax assessment against [REDACTED], LLC ("the Taxpayer") resulting from an adjustment to add back expenses related to non-taxable income. 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 | INTEREST | PENALTIES | TOTAL |
|-------------------------------|---------------|---------------|---------------|---------------|
| FY from Sept 2012 – Sept 2013 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| TOTAL | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |

At issue in this dispute is whether the Taxpayer failed to report related expenses to non-taxable income, specifically, the dividend income in accordance with KRS 141.010(13)(d)(4). KRS 141.010(13)(d)(4) provides:

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus:

(d) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except:

4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once.

103 KAR 16:060(7) provides guidance on the methods which may be used in determining the related expense adjustment. Since the amount of actual expenses is unknown, the Department utilized the method prescribed in Section 7(e) of 103 KAR 16:060, a flat percentage of the nontaxable income, in order to estimate the appropriate related expense adjustment. The Department has calculated the appropriate related expense adjustment by multiplying the amount of non-taxable dividend income reported on the return by five (5) percent.

The Taxpayer argues that the dividend income included in the taxable income for federal purposes is pursuant to IRC § 952 (Subpart F Income) and IRC § 78 (Foreign Dividend Gross Up). The Taxpayer also states that the income was derived from interest earned on a lawsuit settlement that occurred in ██████████ and that no expenditures for the legal proceedings were deducted. However, the Taxpayer has deducted various expenses that could be related, directly or indirectly, to the non-taxable dividend income; therefore, a related expense adjustment must be included in determining the Taxpayer's taxable income.

It is the Department's position that since the Taxpayer's income received from the settlement is considered to be dividend income, which is not taxable for Kentucky, the income is subject to a related expense adjustment to add back deductions attributable to non-taxable income. See KRS 141.010(12)(b); KRS 141.010(11)(f); 103 KAR 16:060 § 7.

The Taxpayer has provided no additional information in support of its claim nor has it suggested another method in the Regulation. It is therefore the Department's position that the related expense adjustment for tax year ended ██████████, 2013, is valid.

For the tax year ended ██████████ 2013, the Department has assessed interest that will accrue until the tax is paid. See KRS 141.220; 141.985; 131.183; 103 KAR 15:050 § 4.

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

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