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ROBBIE RUDOLPH
SECRETARY

In the matter of:

████████████████████ COMPANY;
████████████████████ COMPANY; and
████████████████████ COMPANY

Contact: ██████████ Companies
████████████████████

FINAL RULING NO. 2005-75
December 12, 2005

Insurance Premiums Tax Refunds Denied
for the periods 1999 and 2000

FINAL RULING

The Kentucky Department of Revenue has denied refunds from amended Insurance Premiums Tax Returns for tax years 1999 and 2000 for ██████████ Company, ██████████ Company, and ██████████ Company (referred to collectively as "██████████"). The following schedule reflects the refund amounts denied from amended returns per tax year for each company:

Company	Refunds Denied	
	1999	2000
████████████████████	\$ ██████████	\$ ██████████
████████████████████	\$ ██████████	\$ ██████████
████████████████████	\$ ██████████	\$ ██████████
Totals per Tax Year	\$ ██████████	\$ ██████████

At issue is ██████████'s claim that the fixed percentages provided by the Department on the return form no longer accurately represent the amount of premium reasonably allocable to fire for the purpose of calculating the fire insurance tax.

██████████ filed amended returns using percentages which they claim reflect actual company loss experience. It is ██████████'s position that company loss experience is a more reasonable method of determining the percentages, as it more closely approximates the amount of premium related to fire coverage. The Department denied the refunds. ██████████ submitted a letter of protest dated ██████████, 2005.

The percentages provided by the Department and ██████████'s percentages, as proposed on the amended returns, are shown below:

██████████ Company				
	1999		2000	
	Dept. of Revenue	██████████	Dept. of Revenue	██████████
Homeowners' Policies A, B, C & Tenants	33.3	19.3	33.3	24.9
Multiple Peril	50.0	22.7	50.0	25.1
Farmowners	33.3	29.7	33.3	31.5

██████████ Company				
	1999		2000	
	Dept. of Revenue	██████████	Dept. of Revenue	██████████
Inland Marine	15.0	5.1	15.0	5.9
Automobile-Comprehensive	37.5	13.2	37.5	7.3
Homeowners' Policies A, B, C & Tenants	33.3	19.3	33.3	24.9
Multiple Peril	50.0	22.7	50.0	25.1
Farmowners	33.3	29.7	33.3	31.5

██████████ Mutual Automobile Insurance Company				
	1999		2000	
	Dept. of Revenue	██████████	Dept. of Revenue	██████████
Comprehensive	37.5	7.8	37.5	8.1

For the reasons that follow, the above-referenced requests for refunds were legitimately denied the Taxpayer by the Commonwealth of Kentucky.

KRS 136.360 imposes a premium tax at the rate of "...three-fourths of one percent (0.75%) of all amounts paid to such insurance company or its representative, whether such payments are designated as premiums or otherwise, during the previous calendar year for fire insurance and that portion of the premium reasonably allocable to insurance against the hazard of fire included in other coverages other than life and disability insurances." (Emphasis added.)

██████████ claims that the Department's fixed percentages provided on the Insurance Premiums Tax Return do not accurately represent the amount of premium "reasonably allocable" to fire. They claim that the percentages they used on the amended returns are based on company loss, and that this appears to be a more reasonable method of determining the appropriate fire percentages.

In letters dated ██████████, 2005 and ██████████, 2005 and in teleconferences on ██████████, 2005 and ██████████, 2005, the Department asked ██████████ to provide their calculation of the percentage of insurance premium allocated to fire. On no occasion did ██████████ provide specific information to clarify how the percentages were determined.

The Department disagrees with ██████████'s interpretation of KRS 136.360. The statute provides that the tax is on the premiums allocable to insurance against the hazard of fire, not the actual fire loss. Furthermore, the Department assumed responsibility of administering the insurance premiums tax from the Department of Insurance in 1966 and the percentages have remained unchanged since that time. These percentages represent the Department's long-standing interpretation of KRS 136.360. In addition, KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Administration regulations 103 KAR 1:050, Forms Manual, includes the official version of Form 74A100, Insurance Premiums Tax Return, which sets forth these percentages. Therefore, the percentages have been promulgated in a regulation. For the reasons stated above, it is the Department's position that the percentages that the Department provides on the Insurance Premiums Tax Return are reasonably allocable to the risk of fire. As ██████████ has provided no specific information to explain their calculation of the fire percentages they used on their amended returns, it is the Department's position that the above-referenced refunds were correctly denied.

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

