



FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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Mike Burnside
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In the matter of:

█ & █

Contact: █

FINAL RULING NO. 2007-53
November 27, 2007

Intangible Property Tax Refund Request
January 1, 2004 through January 1, 2005

FINAL RULING

The Kentucky Department of Revenue currently has pending a refund request by █ and █ totaling \$ █ for the tax years January 1, 2004 and January 1, 2005. A breakdown is shown in the chart below:

Tax Year	Tax	Interest	Penalty	Total Refund Requested
January 1, 2004	(\$ █)	\$ █	\$ █	(\$ █)
January 1, 2005	(\$ █)	\$ █	\$ █	(\$ █)
TOTALS	(\$ █)	\$ █	\$ █	(\$ █)

The Kentucky Department of Revenue currently has before it requests by █ and █ for the refund of intangible property ad valorem taxes they paid for the tax years 2004 and 2005. These refund requests or claims total \$ █, and consist of a refund claim of \$ █ for 2004 and a claim of \$ █ for 2005. These refund claims were presented by documents styled amended returns for these two tax years.

At the outset, these refund claims must be denied by virtue of the following provision of the refund statute that governs ad valorem tax refund claims:

No state government agency shall refund ad valorem taxes, except those held unconstitutional, unless the taxpayer has properly

followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

KRS 134.590(2). ██████████ and ██████████ had available to them “the protest and appeal rights granted under the provision of KRS 131.110.” KRS 132.486(3) (now found at KRS 132.486(2)). They did not follow this procedure with respect to the intangible assessments for 2004 and 2005 and given the language of KRS 134.590(2) quoted above, therefore cannot now seek refunds of the taxes paid based upon those assessments.

██████████ and ██████████ admittedly owned taxable corporate bonds as of the January 1 assessment dates for the tax years in question. They have not disputed the fair cash value of those bonds as of those assessment dates except in one respect. Specifically, they contend that the amounts of loans to the ██████████ secured by those bonds or for which these bonds were used as collateral should be deducted from or offset or netted against the bonds’ value.

This contention is without merit, as demonstrated by the recent decision of the Kentucky Board of Tax Appeals in Anson Stamping Co., LLC v. Revenue Cabinet, KY TAX REPORTER (CCH) ¶ 202-698 (Ky. Bd. Tax App., Order No. K-18944, June 20, 2003). There, the Board held that for ad valorem tax purposes, a taxpayer could not offset its accounts payable against the fair cash value of its accounts receivable. The Board relied upon Lynch v. Kentucky Tax Commission, 333 S.W.2d 257 (Ky. 1960), in which this state’s highest court stated the following with respect to Ky. Const. § 172, which states the fair cash value rule that governs this case:

A fair voluntary sale embraces the idea that neither the seller nor the purchaser is compelled to sell or buy and that the transaction is free from the assumption of any obligation except the transfer of the property for the amount agreed to be paid. The ‘fair cash value’ of the property refers to the value of the property...without any reduction by reason of taxes, liens, encumbrances or otherwise.

Id. at 262.

The Board’s Anson Stamping decision also included the following quotation from this state’s highest court’s decision in Henderson Bridge Co. v. Commonwealth, 99 Ky. 623, 31 S.W. 486, 491 (1895):

Of course, a debt cannot be made the subject of taxation as against the one who owes it. But, on the other hand, neither can an outstanding debt be deducted from the value of any property in assessing same for taxation. It cannot be done in behalf of an individual; is never done; and when the constitution requires that

the property (not stock or capital stock, but property) of all corporations must be taxed in the same manner as the property of an individual, then it is manifest that neither can a corporation, in an assessment of its property for taxation, obtain any credit for any debt that it may owe. This proposition we think absolutely clear.

Another decision of this state's highest court not relied upon by the Board in Anson Stamping but nevertheless supportive of the Department's position here is Commonwealth ex rel. Reeves v. Sutcliffe, 287 Ky. 809, 155 S.W.2d 243 (1941). At issue in that case was the ad valorem tax assessment of intangible property consisting of the right of a trust beneficiary to the net income of a trust fund during his lifetime. This right was subject to a provision that decreed that the beneficiary would forfeit this life interest if he attempted to sell it. The argument was made that this meant the life interest had no market value and thus could not be the subject of ad valorem taxation. The court rejected this argument, reasoning that fair cash value under Ky. Const. § 172 meant "the highest price the property would bring, free of encumbrances, at a fair and private sale for cash." 155 S.W.2d at 245 (emphasis by court).

Based upon the foregoing, it is clear that the law simply does not allow the deduction of the ██████████' debts from the fair cash value of their bonds. The ██████████ argument that the fair cash value of their bonds should be limited to the net amount they would realize if those bonds were liquidated flies in the face of the well-settled principles set forth above. This point is illustrated by the everyday reality that real property is assessed at its fair cash value without any reduction on account of any mortgage to which that property is subject.

Therefore, the Department properly denied ██████████ and ██████████' intangible property ad valorem tax refunds totaling \$ ██████████.

This letter is the final ruling of the Kentucky 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



DON GUIER
Executive Director
Legal Services for Revenue

cc: █

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

