



FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE

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In the matter of:

██████████, INC.

Contact: ██████████, Inc.

FINAL RULING NO. 2007-54  
November 27, 2007

FINAL RULING

The Kentucky Department of Revenue currently has outstanding intangible property tax assessments against ██████████, Inc. (██████████) totaling \$██████████ (plus applicable interest and penalties) for the periods of January 1, 1998 through January 1, 2000. A breakdown of the assessment is shown in the chart below:

Tax Year	Tax Due	Interest As of 11/27/07	Penalty As of 11/27/07	Total Due As of 11/27/07
January 1, 1998	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 1999	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2000	\$██████████	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████	\$██████████

██████████ constructs ██████████ and ██████████ jobs in several states. All of its work is performed on the behalf of ██████████ LLC. ██████████ and ██████████ have common ownership.

The burden rests upon ██████████ to demonstrate that the intangible tax assessment in question is incorrect or invalid. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1998). Moreover, in accordance with KRS 131.110, ██████████ was required to submit with its protest or within such additional time as allowed by the Department a supporting statement consisting of "financial statements, records or other documentation that would allow the Revenue Department some basis for reconsideration." Eagle Machine Co., Inc. v. Commonwealth by Gillis, 698 S.W.2d 528, 529 (Ky. App. 1985). This documentation must be "something more substantial than mere denials of tax liability." Id. at 630.

██████████ contends that accounts receivable from certain out-of-state jobs qualified for the favorable tax treatment allowed under KRS 132.020(2) for the tax years in question for “[a]ccounts receivable...arising out of or created in the course of regular and continuing business transactions substantially performed outside this state.” The Department has written ██████████ requesting documentation supporting its protest of the portion of the assessment attributable to this issue. ██████████ has failed to respond or submit any documentation that would afford the Department a basis for reconsidering this tax liability. Accordingly, ██████████’s protest on this point has not been properly supported as required by KRS 131.110. Eagle Machine, supra.

██████████ also maintains that accounts receivable from ██████████ should be offset by its accounts payable to ██████████. Intangible property, like other forms of property subject to ad valorem taxation, must be assessed for taxation purposes at its fair cash value. Ky. Const. § 172; KRS 132.190(3). No deduction from fair cash value is allowed for debts, obligations, promissory notes or any other liability a taxpayer may have. This principle is discussed in and illustrated by the decision of the Kentucky Board of Tax Appeals of Anson Stamping Co., LLC v. Revenue Cabinet, Ky. Tax Reporter (CCH) ¶ 202-698 (Ky. Bd. Tax App., K01-R-37, Order No. 18944, June 20, 2003). ██████████’s position on this point is without merit.

Finally, ██████████ disputes the assessment of a penalty. ██████████ misclassified property on its return, rendering the property as misclassified omitted property. A portion of ██████████’s accounts receivable were also not listed for taxation by virtue of its improper offsetting against those accounts receivable by accounts payable. A penalty was therefore properly assessed in accordance with KRS 132.290(3).

Therefore, the outstanding intangible property tax assessments totaling \$ ██████████ (plus applicable interest and penalties) are legitimate liabilities of ██████████, Inc. and due the Commonwealth of Kentucky.

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.

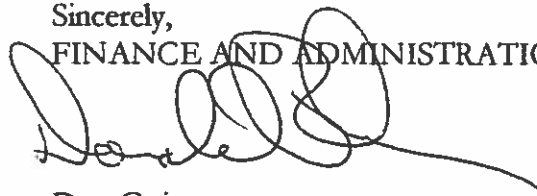
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

