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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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THOMAS B. MILLER
Commissioner

In the matter of:

██████████, Inc.
Protest of Intangible
Intangible Property Tax for 1999-2002

Contact: ██████████, Inc.

FINAL RULING NO. 2008-45
July 18, 2008

FINAL RULING

The Department of Revenue currently has an outstanding assessment for intangible ad valorem or property taxes in the amount of \$██████████ for 1999-2002 against ██████████ Inc. A breakdown of the assessment is shown in the chart below:

Tax Year	Tax Due	Interest As of 7-18-2008	Penalty As of 7-18-2008	Total Due As of 7-18-2008
January 1, 1999	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2000	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2001	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2002	\$██████████	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████	\$██████████

The assessment in question is presumed to be valid and it is the taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). It is undisputed that the taxpayer ██████████, Inc. ("██████████") is a corporation organized under the laws of Kentucky with its principal place of business at ██████████, Kentucky. It is also undisputed that the assessment in question is based upon the obligations of certain ██████████ manufacturers with which ██████████ did business to apply money ██████████ deposited with those manufacturers to satisfy debts or liabilities owed by ██████████. These obligations of the manufacturers to ██████████ were in essence accounts receivable or credits and thus intangible personal property owned by ██████████ subject to Kentucky ad valorem tax.



Kentucky law is clear that all property, including intangible personal property, must be assessed for ad valorem tax purposes unless an exemption authorized by or set forth in the Kentucky Constitution applies. Ky. Const. §§ 3, 170, 172, 174. The term “property” is broad in scope and embraces any existing, enforceable collectible demand that one person has against another person or against property upon which it is a lien and out of which it can be collected. See, e.g., Button v. Drake, 302 Ky. 517, 195 S.W.2d 66 (1946); Commonwealth v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W.1032 (1911).

Such is the case here. Based upon the foregoing, ██████████ owned intangible property - - accounts receivable or credits from the manufacturers - - during the tax years in question. This property had a tax situs in Kentucky, as ██████████ was a corporation organized under the laws of Kentucky and had its domicile or principal place of business in Kentucky. See KRS 132.190(1) and (4)(version in effect for the tax years in question); 132.200; Commonwealth ex rel. Lockett v. Louisville and Nashville Railroad Co., 479 S.W.2d 15 (1972); Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789 (1918); Inter-Southern Life Ins. Co. v. Milliken, 149 Ky. 516, 149 S.W. 875 (1912). This property was most definitely not exempt from taxation for the years in question. Intangible property - - e.g., money in hand, notes, bonds, accounts and other credits - - was clearly subject to ad valorem taxation until the 2005 tax year. 2005 Ky. Acts, ch. 168, §§ 52-66, 168, 171.

The only issue that appears to be raised by ██████████ is that it should be able to offset against the accounts receivable or credits its obligations or accounts payable to the automobile manufacturers. It is well settled under Kentucky law, however, that property is to be assessed at its fair cash value or “the highest price the property would bring, *free of encumbrances*, at a fair and voluntary private sale thereof for cash.” Commonwealth v. Sutcliffe, 287 Ky. 8009, 155 S.W.2d 243, 245 (1941)(emphasis by court). The Kentucky Board of Tax Appeals addressed this very issue in its recent decision in the case of Anson Stamping Co., LLC v. Revenue Cabinet, KY TAX REPORTER (CCH) ¶ 202-698 (File No. K01-R-37, Order No. K-18944, June 20, 2003). In that case, the Board rejected the taxpayer’s argument that intangible personal property assessments issued to it should have been set aside because its accounts payable should have been offset against the accounts receivable upon which the assessments were based, thereby reducing those assessments to zero. The Board’s reasoning, which is equally applicable to this case, was as follows:

The Kentucky Constitution requires all property not exempted be assessed at its fair cash value. Reducing the amount of an asset account by offsetting the amount of a liability account does not accurately reflect the fair cash value of the property any more than reducing a house’s value by the amount of the mortgage would accurately reflect the value of the house. The fact that this appeal involves an intangible tax assessment does not change the rule. Revenue rightly points out controlling precedent on an ad valorem case involving the franchise tax from over 100 years ago.

“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 corporation 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.” Henderson Bridge Co. v. Commonwealth, Ky., 31 S.W. 486, 491 (1895).

Section 172 of the Kentucky Constitution makes no distinction between intangible and other forms of property, and requires that all property be taxed at its fair cash value, estimated as the price it would bring at a fair voluntary sale. Reductions from this fair cash value for liens, encumbrances or any other reason are prohibited. Lynch v. Kentucky Tax Commission, Ky., 333 S.W.2d 257, 262 (1960).

For the reasons stated above, the assessment in question is valid and a legitimate ad valorem tax liability of [REDACTED], Inc.

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.

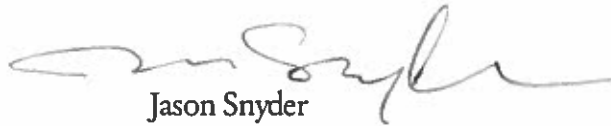
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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



Jason Snyder
Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [REDACTED], PLLC

Attn: [REDACTED], CPA

[REDACTED]