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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED], Inc.

FINAL RULING NO. 2010-35
June 3, 2010

FINAL RULING

The Department of Revenue has outstanding omitted intangible ad valorem tax assessments issued to [REDACTED], Inc. ("the Taxpayer") for the tax years 2002 through 2005. Below is a breakdown of these assessments, including penalties and interest that has accrued to date (and which will continue to accrue until paid) as well as the amount of tax:

Tax Year (Assessment Date)	Tax Due	Interest As of 06/03/2010	Penalty As of 06/03/2010	Total Due As of 06/03/2010
January 1, 2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

As indicated above, the assessments in question are for *omitted* intangible property because the Taxpayer did not file intangible personal property tax returns with the Department as required by law. See KRS 132.220. The property assessed includes accounts receivable and loans to shareholders and employees. During the tax years in question, a state valorem tax of \$0.25 upon each \$100 of value of all money in hand, notes, bonds, accounts and other credits, secured or unsecured, was imposed by KRS 132.020(1).

The Taxpayer protested these assessments by a letter dated ██████████ 2007. No grounds were stated in support of this protest other than that the Taxpayer asked that a pending sales tax refund be applied to these assessments and omitted tangible personal property ad valorem tax assessments that were also issued to the Taxpayer.

The taxpayer's ██████████ 2007 letter did not constitute a valid protest or supporting statement as required by law. See KRS 131.110; Eagle Machine Co. v. Commonwealth, 698 S.W.2d 528 (Ky. App. 1985). The Department has contacted the Taxpayer on at least two occasions, inquiring whether payment of these assessments would be forthcoming. Nothing has been received as of this date.

The assessments in question are presumed to be valid and correct 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). The Taxpayer has provided nothing to overcome this presumption. Indeed, as noted above, it has not even provided the Department with a valid protest and supporting statement. The intangible personal property in question clearly appears to have been subject to taxation as well as omitted and properly assessed as such at the correct fair cash value. See KRS 132.220; 132.290; 132.310. The penalties were properly assessed based upon the Taxpayer's failure to file returns or report this property as required by law. KRS 132.220; 132.290.

For the reasons stated above, the tax, penalty and interest represented by the omitted intangible property ad valorem tax assessments described above are legitimate liabilities or obligations due the Commonwealth of Kentucky from the Taxpayer, ██████████, 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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

cc:

[REDACTED]
[REDACTED] LLP
[REDACTED]