



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], LLC

Contact: [REDACTED]

FINAL RULING NO. 2013-11
February 22, 2013

Assessment of Kentucky Limited Liability Entity Tax
Taxable Years 2007, 2008, 2009, 2010 and 2011

FINAL RULING

The Kentucky Department of Revenue ("DOR") has outstanding limited liability entity tax ("LLET") assessments against [REDACTED], LLC ("[REDACTED]") for the taxable years ending on December 31, 2007 through December 31, 2011 ("the audit period"). [REDACTED] has protested these assessments pursuant to KRS 131.110 and the relevant facts and contentions [REDACTED] has advanced in support of this protest are set forth and addressed below. The following schedule reflects the total underpayments of LLET represented by these assessments, plus applicable penalties and interest accrued to February 22, 2013;

Tax Year	Tax Due	Interest Due	Penalties Due	Total Due
2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2010	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the years in question, ██████████, a single member limited liability company whose sole member was ██████████, was subject to Kentucky LLET during the audit period. See generally KRS 141.0401 and 141.010(24) and (26).

Thus, ██████████ was required by law to file its returns and pay the tax due on or before the fifteenth of the month following the close of the tax years in question. KRS 141.0401(4); 141.160. The time for the filing of these returns could be extended. See KRS 141.170; 103 KAR 15:050 § 3. Such an extension did not extend the time for payment of the tax which was the date on which the return was due, however, and payment of the tax subsequent to the due date of the return would cause interest to accrue and be added to the taxpayer's liability. See KRS 141.220; 141.170(3); 141.985; 131.183; 103 KAR 15:050 §§ 3 and (4). Under KRS 131.175, interest due on an unpaid tax may not be waived.

To understand and be able to address the issue presented by ██████████' protest, it will first be necessary to set out some of the facts relevant to each tax or taxable year with respect to ██████████' filing of its tax returns.

The correct Kentucky single member LLET return (Form 725) was filed for ██████████ for the 2007 tax year, but was incorrectly attached to the Kentucky individual income tax return of ██████████. A Kentucky Form 725 was timely filed on behalf of ██████████ on ██████████ 2008 and reflected the minimum \$175 LLET was due; however no payment was included with the return. The filing of the return demonstrates that the taxpayer was aware of the limited liability company's filing requirements and tax liability for tax year 2007 forward.

The correct Kentucky single member LLET return (Form 725) was filed for ██████████ for the 2010 tax year, but was incorrectly attached to the Kentucky individual income tax return of ██████████. The Kentucky Form 725 was timely filed on ██████████ 2011 and reflected the minimum \$175 LLET was due; however no payment was included with the return.

Correct Kentucky single member LLET returns (Form 725) were filed for ██████████ for the 2008, 2009 and 2011 tax years on ██████████ 2012; however no payment was included with these returns.

According to the Kentucky Secretary of State's records, ██████████ was organized in Kentucky on ██████████, 2004. A limited liability company that is organized under the laws of this state is "doing business in this state" in accordance with KRS 141.010 (25) and is subject to the LLET outlined in KRS 141.0401.

As noted above, ██████████ was under a positive legal duty not only to file its returns by the due date specified in the law (i.e., "on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year"), but also to pay the tax specified in that return by that due date. See KRS 141.0401(4); 141.160; 141.220. The Department's tax forms for all the years in

question (Forms 725) and their instructions all unambiguously provided that payment of the tax due was to be made by check payable to the Kentucky State Treasurer. These forms and their instructions were promulgated by administrative regulations and thus have the force and effect of law. KRS 131.130(3); Flying J. Travel Plaza v. Commonwealth, 928 S.W.2d 344, 347 (Ky. 1996).

Moreover, the payment of the tax was due by “the fifteenth day of the fourth month following the close of the taxpayer’s taxable year” even if that taxpayer obtained an extension of time to file the applicable return. KRS 141.170(3); 141.220; 103 KAR 15:050 § 3. The returns and instructions for the tax years in question are likewise clear on this point.

Nevertheless, ██████████ did not pay the taxes due for the years in question in a timely manner, as required by the statutory provisions referred to above. The payments were not made on or before the due dates of ██████████ returns for 2007, 2008, 2009, 2010 and 2011. No check payable to the Kentucky State Treasurer in the amounts due accompanied the 2007 or 2010 returns and no returns or payments were submitted for 2008, 2009 and 2011. Because these payments are late, ██████████ owes the interest that the Department has assessed. See KRS 141.170(3); 141.220; 141.985; 131.183; 103 KAR 15:050 § 4. ██████████ is also liable for a penalty attributable to its failure to pay the tax due in a timely manner for the year (2009) in which it failed to pay the tax in a timely manner. KRS 131.180(1) and (2).

For the reasons stated above, the outstanding LLET assessments totaling \$ ██████████ (plus applicable interest and penalties) are legitimate liabilities of ██████████, LLC owed to the Commonwealth of Kentucky.

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.

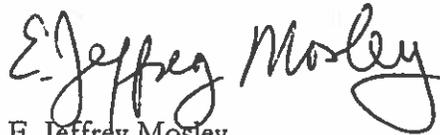
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

