



STEVEN L. BESHEAR  
Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED], Inc.

FINAL RULING NO. 2013-29  
May 23, 2013

Assessment of Interest and Penalty  
For the Taxable Year 2011

The Department of Revenue ("the DOR") has denied a request for a waiver of interest and penalty assessed on Limited Liability Entity Tax (hereafter "LLET") for the taxable year 2011. The following table provides a breakdown of the assessment of interest and penalty for this taxable year:

Taxable Year	Interest	Penalty	Total
2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

FINAL RULING

At issue in this matter is whether the DOR properly assessed interest and penalty on the LLET notice of tax due for the taxable year 2011. [REDACTED] Inc. (hereafter "[REDACTED]") filed its December 31, 2007 through December 31, 2011 returns claiming a deduction for cost of goods sold while calculating its LLET. In accordance with KRS 141.0401, a corporation that does not acquire or produce a tangible product is not entitled to this deduction in calculating its LLET. This point is not in dispute. The DOR made an adjustment to the periods in question and issued assessment for tax, interest and penalty. It has been determined that [REDACTED] took advantage of the 2012 Tax Amnesty Program and paid the tax and half the interest due on all outstanding LLET notices of tax due that were eligible for the Tax Amnesty Program. The 2011 taxable year was not eligible for this program. See KRS 131.400(4)(b).

It is your position that the instructions for computing the LLET are confusing and complicated. You have further stated that had you received notice of the incorrect calculation for the 2007 taxable period before the due date of the 2008 return, none of the subsequent returns would have been incorrect.

The DOR's position is that the instructions for the 2011 Schedule LLET (Form 41A720LLET) are clear with regard to cost of goods sold attributable to Kentucky. The instruction relating to Line 4 of this schedule unambiguously states:

For an entity other than manufacturing, producing, reselling, retailing or wholesaling, no costs shall be included in cost of goods sold.

This instruction cites KRS 141.0401(1)(d) which states with equal clarity:

For any activity other than manufacturing, producing, reselling, retailing, or wholesaling, no costs shall be included in cost of goods sold.

Interest was assessed in accordance with KRS 131.183(1)(a) which states:

All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.

See also KRS 141.985. The law is also clear that this interest may not be waived. KRS 131.175 unambiguously states:

Notwithstanding any other provisions of KRS Chapters 131 to 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have authority to waive the penalty, but not interest, where it is shown to the satisfaction [of the Department] that failure to file or pay timely is due to reasonable cause.

The penalty referred to above was assessed in accordance with KRS 131.180(2) which states:

Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments

determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).

Thus, the penalty referred to above was correctly and properly assessed to ██████████ ██████████ has not established anything to the contrary nor has it established any reason why this penalty should be waived.

Based on the foregoing, the interest and penalty referred to above was properly and correctly assessed to ██████████.

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.

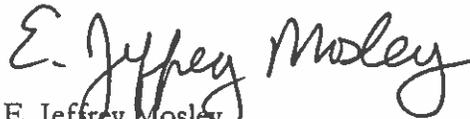
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

