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Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], INC.

Contact: [REDACTED]

FINAL RULING NO. 2015-34  
September 25, 2015

Assessment of Limited Liability Entity Tax  
for the Tax Year Ended December 31, 2009

**FINAL RULING**

The Kentucky Department of Revenue (“the Department”) has issued a limited liability entity tax (“LLET”) assessment against [REDACTED], Inc. (“the Taxpayer”) for the tax year ended December 31, 2009. This assessment resulted from an adjustment to the Taxpayer’s cost of goods sold deduction on Kentucky Schedule LLET for the tax year ended December 31, 2009. The following table provides a breakdown of the amount of tax due, all assessed penalties, as well as accrued interest as of the date of this final ruling:

TAX YEARS	TAX	INTEREST	PENALTIES	TOTAL
2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<b>TOTAL</b>	<b>\$ [REDACTED]</b>	<b>\$ [REDACTED]</b>	<b>\$ [REDACTED]</b>	<b>\$ [REDACTED]</b>

The Taxpayer is in the equipment leasing and commercial loan business. Specifically, the Taxpayer obtains commercial loans to purchase equipment, and then leases that equipment to its customers with an option for the customers to purchase the equipment at the end of the lease term.

The Taxpayer claimed a deduction for cost of goods sold in computing its LLET for the tax year ended December 31, 2009. The Taxpayer argues that it was entitled to a cost of goods sold deduction based upon the fact that it is a “loan intermediary,” who merely passes on “loan” payments from its customers to the bank. It is the Taxpayer’s contention that its receipts are not truly receipts since the payments are passed onto the bank. On this basis, the Taxpayer asserts that it is entitled to either a cost of goods sold deduction or to a reduction in its gross receipts.

However, pursuant to KRS 141.0401(1)(d)(3), only entities that have manufacturing, producing, retailing, reselling, or wholesaling activities are entitled to claim a cost of goods sold deduction. Equipment leasing and commercial lending are financial services which simply do not fall within the realm of industries entitled to take a cost of goods sold deduction for the LLET. As such, the Department properly disallowed the Taxpayer’s cost of goods sold deduction.

The Taxpayer is also not entitled to a reduction in its gross receipts based upon its assertion that it is a “loan intermediary” who merely passes on its customers’ “loan” payments to the bank. All of the sample equipment loan documents and promissory notes provided by the Taxpayer are solely between the bank as lender and the Taxpayer as borrower; and the Taxpayer has legal responsibility for these loan payments. Furthermore, the sample equipment lease provided merely gives the Taxpayer’s customer an option to purchase the equipment at the expiration of the lease. Consequently, the Taxpayer is not entitled to a reduction in gross receipts on this basis.

Finally, the assessment for the tax year ended December 31, 2009 has assessed interest that will accrue until the tax is paid. See KRS 141.220; 141.985; 131.183; 103 KAR 15:050 § 4. The Taxpayer is also liable for a penalty attributable to the failure to pay the tax due for the tax year ended December 31, 2009. KRS 131.180(2).

After reviewing the available information, and the applicable statutes, it is the position of the Department that the outstanding LLET assessment issued against ██████████ Inc. for tax year ended December 31, 2009 is valid.

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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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,

DEPARTMENT OF REVENUE



Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED