



MATTHEW G. BEVIN
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

WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

██████████, INC.

Contact: ██████████, Inc.
ATTN: ██████████

FINAL RULING NO. 2016-30
August 12, 2016

Assessment of Limited Liability Entity Tax
Tax Year Ended December 31, 2012

FINAL RULING

The Kentucky Department of Revenue (“the Department”) has issued limited liability entity tax (“LLET”) assessments against ██████████, Inc. (“the Taxpayer”) for the tax year ended December 31, 2012. The assessments resulted from an adjustment to the cost of goods sold deduction on the Taxpayer’s Kentucky Schedule LLET as well as interest due on the underpayment of estimated tax payments. 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 YEAR	ESTIMATED TAX DUE DATE	TAX	INTEREST	PENALTIES	TOTAL
2012		██████████	██████████	██████████	██████████
2012	06/15/2012	██████████	██████████	██████████	██████████
2012	09/15/2012	██████████	██████████	██████████	██████████
2012	12/15/2012	██████████	██████████	██████████	██████████
TOTAL		██████████	██████████	██████████	██████████

The Taxpayer sold equipment and contends that it is entitled to a LLET cost of goods sold deduction for the cost of the equipment disposed of during the year. The Taxpayer argues the cost of goods sold deduction is allowable pursuant to KRS 141.0401(1)(d)(3).

In determining the LLET, KRS 141.0401(1)(d)(3) allows a cost of goods sold deduction only for taxpayers who are engaged in manufacturing, producing, reselling, retailing or wholesaling activities. Furthermore, pursuant to KRS 141.0401(1)(d)(1), amounts allowable as cost of goods sold for the LLET must be allowable as cost of goods sold pursuant to the Internal Revenue Code and any guidelines issued by the Internal Revenue Service, unless modified by Kentucky statute, *and* must be incurred in acquiring or producing the tangible product generating the Kentucky gross receipts. KRS 141.0401(1)(d)(1). Consequently, cost of goods sold for purposes of computing the LLET shall only include amounts that are allowable as cost of goods sold for federal purposes.

In this case, the Taxpayer has failed to establish that the costs included in its cost of goods sold deduction were includable as cost of goods sold for federal purposes. As such, the Taxpayer has failed to meet the statutory prerequisites for the LLET cost of goods sold deduction.

In addition, the Taxpayer failed to make estimated tax payments; therefore, interest is owed on the underpayment of estimated taxes. Every corporation subject to tax under KRS 141.040 and 141.0401 is required to make estimated tax payments if the income tax and limited liability entity tax imposed can reasonably be expected to exceed five thousand dollars (\$5,000) for the taxable period. See KRS 141.042. KRS 131.183(1)(a) mandates that all taxes payable not paid at the time prescribed by statute shall accrue interest at the tax interest rate.

In addition, KRS 141.985 states

If the tax imposed by this chapter, whether assessed by the department, or the taxpayer, or any installment or portion of the tax is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax, interest upon the unpaid amount at the tax interest rate.

Furthermore, dates in which estimated tax payments are due are provided. See KRS 141.044. Therefore, since no estimated tax payments were remitted, interest is due on the underpaid amount.

Based on the above, it is the position of the Kentucky Department of Revenue that the outstanding LLET assessments issued against ██████████, Inc. for the tax year ended December 31, 2012, are valid liabilities due to the Commonwealth of Kentucky. In addition, the assessments for tax year ended December 31, 2012, have 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. KRS 131.180(2).

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.

██████████, Inc.
August 12, 2016 – Final Ruling No. 2016-30
Page 4

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

DEPARTMENT OF REVENUE

Bethany Atkin Rice

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED