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Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE

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JOHN MAY  
Commissioner

In the matter of:

CITY OF [REDACTED]

Contact: [REDACTED] City Manager  
[REDACTED]

FINAL RULING NO. 2007-32  
August 24, 2007

FINAL RULING

The City of [REDACTED] filed a complaint with the Department of Revenue (hereinafter, the "Department") on [REDACTED], 2006, requesting a hearing with the Local Distribution Fund Oversight Committee (hereinafter the "Oversight Committee"). See KRS 136.658(4). A hearing was conducted before the Oversight Committee on [REDACTED], 2007 in accordance with the provisions of KRS 13B. Thereafter, the Oversight Committee issued its findings and recommendations to the Commissioner of the Department of Revenue. See Committee's Recommended Order No. 07-LDFOC-011 (June 20, 2007); KRS 136.658(5)(e). After reviewing the Oversight Committee's Recommended Order, the Department now issues a Final Ruling. See KRS 136.658(6).

At issue is whether the Department correctly denied a request by the City of [REDACTED] to increase the certified historical telecommunications tax receipt collection amount it had previously submitted. The Department used the original figure as the basis for determining the city's proportionate share of the fixed monthly hold-harmless amount from the gross revenues and excise tax fund distributed by the Department. See KRS 136.650(1), (2); 136.652(2). KRS 136.650(3) allows the Department to re-determine a political subdivision's certified collection amount by increasing that amount based upon additional receipts received between June 30, 2005, and December 31, 2005, if a substantial change occurred in its base revenue as a result of the political subdivision enacting or modifying the rate of a local franchise fee prior to June 30, 2005. The City of [REDACTED] argues that an increase in its cable franchise fee rate from three percent (3%) to five percent (5%) on [REDACTED], 2005, resulted in a substantial change in its base revenue.



The Department interprets the term “base revenue” as referring to a political subdivision’s total tax base. The overall tax receipt base of the City of [REDACTED] was in excess of [REDACTED], [REDACTED] dollars (\$ [REDACTED]). The base revenue amount increased by approximately [REDACTED] dollars (\$ [REDACTED]) as a result of the franchise fee rate increase from three percent (3%) to five percent (5%). The Department determined this change in base revenue of less than three-tenths of one percent (.3%) to be insubstantial. Therefore, the City of [REDACTED]’s request for the Department to re-determine its certified collection amount is denied.

This 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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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.

City of [REDACTED]

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Sincerely,



John May

COMMISSIONER

DEPARTMENT OF REVENUE

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED