



FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

Ernie Fletcher
Governor

501 High Street
Frankfort, Kentucky 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

Mike Burnside
Secretary

John May
Commissioner

In the matter of:

[REDACTED] BANK FSB

Contact: [REDACTED] Bank FSB

FINAL RULING NO. 2007-48
September 13, 2007

Building and Loan Association Tax
January 1, 2005 through January 1, 2007

Tax Year	Tax Due	Interest As of 09/25/07	Penalty As of 09/25/07	Total Due As of 09/25/07
January 1, 2007	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

FINAL RULING

The Kentucky Department of Revenue has denied refund claims totaling \$ [REDACTED] (plus applicable interest) for the assessment dates of January 1, 2005 and January 1, 2006 and has an outstanding assessment totaling \$ [REDACTED] for the assessment date of January 1, 2007 for [REDACTED] Bank FSB.

[REDACTED] Bank filed their original Foreign Savings and Loan Tax Return for assessment date January 1, 2007 on January 30, 2007 and amended Foreign Savings and Loan Tax Returns for assessment dates January 1, 2005 and January 1, 2006 on January 23, 2007. These returns excluded the amount reported for deposits maintained in Kentucky based upon [REDACTED] Bank's interpretation of KRS 136.310(2)(a) which states,

The total value of deposits maintained in Kentucky less any amounts where the amount borrowed equals or exceeds the amount paid in by those members.

After reviewing reports filed by ██████████ Bank with the FDIC, which showed that ██████████ Bank had allocated a large number of deposits to its Kentucky branch, the Department denied ██████████ Bank's refund request. As part of its protest of the Department's denial of the refund, ██████████ Bank made two arguments regarding KRS 136.310(2)(a). First, ██████████ Bank argued that the concept of "maintenance" as used in the statute refers to the location at which a bank keeps its records regarding an account. Because all of ██████████ Bank's records were kept at its ██████████ corporate headquarters, ██████████ Bank argued that it did not "maintain" any deposits in Kentucky. Second, ██████████ Bank argued that the reference to "those members" in KRS 136.310(2)(a) indicated that only savings and loan institutions, which are organized on the basis of mutual ownership (instead of ownership by stock holders), were subject to tax on their deposits. Because ██████████ Bank is a stock institution, ██████████ Bank stated that it was not liable for tax on its deposits.

At the protest conference, ██████████ Bank was informed that the Department could see no reason why the Kentucky General Assembly would create a tax that was based not upon an out-of-state taxpayer's economic relationship with Kentucky but rather on an easily manipulatable fact such as where the taxpayer kept its records. The Department told ██████████ Bank that it did not accept ██████████ Bank's interpretation of where deposits are "maintained" for purposes of KRS 136.310(2)(a).

██████████ Bank also was informed that the Department did not view KRS 136.310(2)(a) as applying only to mutual institutions. Accordingly, the provision of the statute providing a deduction for "any amounts where the amount borrowed equals or exceeds the amount paid in by those members" does allow savings and loan institutions a special deduction but it does not imply that KRS 136.310(2)(a) itself only applies to savings and loan institutions. Nowhere does KRS 136.310(2)(a) limit those who are taxed on the basis of their deposits to mutual institutions. In fact, the opposite is the case. KRS 136.310(2) begins by stating that those subject to the tax it contains shall be "each financial institution included in subsection (1) of this section," and KRS 136.310(1) includes "[e]very federally or state chartered savings and loan association, savings bank, and other similar institution authorized to transact business in" Kentucky.

Additionally, although the language of the statute is unusual in that it refers to "those members" even though the term "members" no where else appears in KRS 136.310, when KRS 136.310(2)(a) is compared with KRS 136.290, which together with KRS 136.300 imposes a tax on savings and loans, savings banks and similar institutions operating solely in Kentucky, the intent of the provision is more clear.

Together with KRS 136.300, KRS 136.290(2) imposes a tax on the “certificates of deposit, savings accounts, demand deposits, undivided profits, surplus, and general reserves, excepting the share of borrowing members where the amount borrowed equals or exceeds the amount paid in by those members” of savings and loans, savings banks and similar institutions operating solely in Kentucky. Here, savings banks are subject to this tax notwithstanding the reference to “members,” as is confirmed by the fact that KRS 136.300(1) states that the tax is imposed on “each financial institution included in subsection (1) of KRS 136.290,” and KRS 136.290(1) includes “savings banks.” Moreover, comparing KRS 136.290(2) with KRS 136.310(2)(a) shows that KRS 136.290(2) covers the same ground as KRS 136.310(2)(a) except KRS 136.290(2) is more detailed. Thus, whereas KRS 136.310(2)(a) refers only to “deposits,” KRS 136.290(2) refers to certificates of deposit, savings accounts [and] demand deposits.”¹ Similarly, KRS 136.310(2)(a) allows savings and loans a deduction for “amounts where the amount borrowed equals or exceeds the amount paid in by those members,” while KRS 136.290(2) allows savings and loans the deduction for “the share of borrowing members where the amount borrowed equals or exceeds the amount paid in by those members.” The fact that KRS 136.310(2)(a) is less detailed than KRS 136.290(2) does not create an implication that the types of institutions taxed by KRS 136.310(2)(a) is somehow different than those taxed by KRS 136.290(2) (together with KRS 136.300).

Therefore, the refund request for the 2005 and 2006 Foreign Savings and Loan Tax totaling \$ [REDACTED] (plus applicable interest) is denied and the outstanding assessment for the 2007 Foreign Savings and Loan Tax is deemed a legitimate liability of [REDACTED] Bank due to the Commonwealth of Kentucky.

This letter is the final ruling of the Kentucky 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.

¹ Note that KRS 136.290(2) also includes within an institution's capital subject to tax “undivided profits, surplus, and general reserves.” These amounts are subject to tax by KRS 136.310(2)(b), not KRS 136.310(2)(a).

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.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



DON GUIER
Executive Director
Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

