



STEVEN L. BESHEAR  
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

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] LLC

Contact: [REDACTED], LLC

Attn: [REDACTED]

FINAL RULING NO. 2009-58  
December 11, 2009

Health Care Provider Tax refund denial for

[REDACTED] LLC for the periods August 1, 2007 to May 31, 2008

**FINAL RULING**

The Kentucky Department of Revenue has denied net refund requests in the amount of \$ [REDACTED] plus applicable interest as depicted in the chart below.

Entity	Period	Tax	Interest as of 12/11/2009	Total per Period
[REDACTED]	08/01/2007 05/31/2008	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])
	TOTAL	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])

[REDACTED], LLC (" [REDACTED] ") provides housing and healthcare services consisting of adult day health, assisted living and nursing services to older adults.

[REDACTED] filed amended Health Care Provider Tax Returns for the applicable periods requesting credit letters for "conversion days", a term used by the industry but appearing

nowhere in the health care provider tax statutes. “Conversion days” exist in situations where one individual resides in one bed in a room and the remaining bed is paid for on that individual’s behalf to keep it unoccupied.

At issue is whether the revenue from unoccupied beds held as unavailable and termed “conversion day” beds should be included in ██████████’s gross revenue and subject to the health care provider tax.

██████████ contends that the unoccupied beds at issue should not be included in the calculation of tax due and that only beds with patients should be counted. ██████████ further contends that the basis of the tax is the number of “non-Medicare patient days”, not the revenue generated.

KRS 142.361 (1)(b) states:

The base for the assessment shall be determined on July 1 of each year, beginning on July 1, 2004, by dividing total gross revenues received by all nursing facilities for nursing facility services during the prior fiscal year by the total patient days for all nursing facilities attributable to nursing facility services during the prior fiscal year. The resulting amount shall be the base for the assessment imposed under this subsection, and shall be called “average daily revenue per patient bed.”

(Emphasis added.)

It is the Department of Revenue’s position that the term “total gross revenues” as used in KRS 142.361 includes all revenues received from patient beds, irrespective of actual bed occupancy. The statute does not differentiate between a bed that is occupied by a patient and a bed that is still generating revenue, but reserved for a patient who is physically elsewhere for a time.

Based upon the foregoing, the net Health Care Provider tax refund of \$██████████ (plus applicable interest) was properly denied.

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 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.

Sincerely,



E. Jeffrey Mosley  
Interim Executive Director  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

cc: ██████████ PSC

Attn: ██████████  
██████████

