FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY

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Governor

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John R. Farris
Secretary

In the matter of:

[redacted] LLC

Contact: [redacted] LLC

FINAL RULING NO. 2006-88
October 4, 2006

Assessment of Public Service Company
for tax years 2001 - 2004

FINAL RULING

The Kentucky Department of Revenue currently has outstanding assessments of property totaling $[redacted] for tax years 2001 through 2004 against [redacted] LLC (Taxpayer). The issue is the company's true fair market value. The taxpayer has not submitted a claimed true value. The taxpayer's principal business activity is wireless telecommunications service. The taxpayer was a public service corporation for tax years 2001 through 2004. A breakdown of the assessment is shown in the chart below.

Assessment Date	Assessed Value
January 1, 2001	$[redacted]
January 1, 2002	$[redacted]
January 1, 2003	$[redacted]
January 1, 2004	$[redacted]
Totals	$[redacted]

At issue are the following:

1. Taxpayer has concerns that the Department's current assessments "have no factual basis and arrived at through a faulty interpretation of applicable statutes."

2. The Department has sent letters dated [redacted], 2006 and [redacted], 2006 requesting information to be filed with our office in order to bring this matter to a close. As of the date of this final ruling the Department has not received the requested information nor have we received any returned mail as undeliverable.

Concerning the first issue, all property must be assessed at its fair cash value (Ky. Constitution Sec. 172). The Department of Revenue, Public Service Branch has a standard valuation process to determine the company's fair market value to comply with KRS 136.160.

KRS 136.160(1) states:

> The Revenue Cabinet shall determine the fair cash value of the operating property of a domestic public service corporation as a unit. The fair cash value of the operating property shall be equalized.

Concerning the second issue, it is the Department's position that the taxpayer failed to file the supporting statement as required by KRS 131.110(1) and failed to respond to requests for supporting information.

KRS 131.110(1) states in part:

> The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

The Department has requested information to be filed in order to resolve this issue for the outstanding tax years. The taxpayer has refused to file requested information that may allow the Department to reconsider their assessments. In the following court cases the courts have agreed that supporting documentation must be filed in order for the Department to make reconsideration.

In Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky. App., 698 S.W.2d 528 (1985), the Court held, inter alia, that ". . . in a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error."

In Scotty's Construction Company, Inc. v. Commonwealth Of Kentucky Revenue Cabinet, Ky. App., 779 S.W. 234 (1989), the Court mentions, ". . . the circuit court which held that Scotty's failure to submit documentation as required by the statute before the issuance of the final ruling had the effect of failure to preserve appellant's right to review the assessment and on the strength of Eagle Machine set aside the Board's order and reinstated the determination of Revenue."

The Court then reaffirms its opinion in Eagle Machine by stating: "In a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error."

The Court concludes by stating, ". . . the statute is mandatory in nature."

Based on the above, the Department maintains that [redacted] LLC is subject to full local property tax rates on the value totaling $[redacted] and applicable state property tax rates on the value totaling $[redacted]. 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,
FINANCE AND ADMINISTRATION CABINET

THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [redacted]
Attorney at Law
[redacted]