



FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY

Ernie Fletcher
Governor

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John R. Farris
Secretary

In the matter of:

██████████ CORPORATION

Contact: ██████████
██████████ Corporation

FINAL RULING NO. 2007-10
April 3, 2007

Refund Claim of Public Service Company Property Tax
for tax years 2000 - 2001

FINAL RULING

The Kentucky Department of Revenue has denied a refund claim for public service company property taxes paid for tax years 2000 and 2001 totaling \$██████████ and \$██████████ respectively from ██████████ Corporation ("██████████"). ██████████ made payment of the 2000 taxes on May 7, 2001 and payment of the 2001 taxes on December 5, 2001. A letter postmarked ██████████, 2004 was submitted to the Kentucky Department of Revenue requesting a refund of the taxes it felt had been overpaid for the two years at issue.

The public service corporation property tax is an ad valorem tax. See, e.g., Commercial Carriers, Inc. v. Kentucky Tax Commission, 321 S.W.2d 42 (Ky. 1959). Refunds of ad valorem taxes are governed by KRS 134.590 and must be applied for within two years of the date of the payment of the taxes whose refund is sought. American Life & Accident Insurance Co. v. Commonwealth, 173 S.W.3d 910 (Ky. App. 2004). The same rule applies where the tax in question is held to be unconstitutional.

KRS 134.590(2) states:

No state government agency shall authorize a refund unless each taxpayer individually applies for a refund within two (2) years from the date the taxpayer paid the tax. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance

with KRS 131.110 and 131.340. No state government agency shall refund ad valorem taxes, except those held unconstitutional, unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures. (*Emphasis added.*)

The Department takes the position that KRS 134.590 specifically addresses refund of ad valorem taxes or taxes held unconstitutional and is therefore controlling. ██████████ Corporation clearly failed to request a refund of the taxes paid within 2 years from the date of payment.

Based on the above, the Department maintains that the denial of ██████████ Corporation's refund claim is proper and remains 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,
FINANCE AND ADMINISTRATION CABINET



DONALD S. GUIER
Executive Director
Office for Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

