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] INC.

Contact: [redacted] Inc.

FINAL RULING NO. 2010-44
July 29, 2010

FINAL RULING

The Kentucky Department of Revenue ("DOR") currently has an outstanding assessment of accrued interest against [redacted] Inc. ("[redacted]") for the period January 1, 2005 through December 31, 2005. A breakdown of the outstanding amount of the assessment still due is shown in the chart below:

Tax Period	Outstanding Tax Due	Interest As of 07-29-2010	Outstanding Penalty Due	Total Due As of 07-29-2010
01/01/05 – 12/31/05	$[redacted]	$[redacted]	$[redacted]	$[redacted]

The DOR discovered in 2009 that [redacted] had not filed its Kentucky Sales and Use Tax Energy Exemption Annual Return (51A129) for 2005, which it was required to do by virtue of its status as the holder of an energy direct pay authorization. See 103 KAR 30:140 §§ 4-8. The DOR advised [redacted] of this fact and on [redacted], 2009, [redacted] filed the return and remitted the tax calculated to be due on that return.

The DOR waived the 20% penalty it had assessed as a result as [redacted]' failure to report and pay the tax due in a timely manner. See generally KRS 131.180; KRS 131.175; 103 KAR 1:040. Also assessed by DOR was the interest that had accrued pursuant to KRS 139.650 and 131.183 prior to [redacted]' payment of the tax. This accrued interest remains unpaid.

[redacted] has protested the DOR's assessment of this accrued interest. [redacted]' sole argument is that this interest should be waived because of the time that elapsed between the

2005 return's due date and the DOR's discovery of [redacted]' failure to file that return and pay the tax due.

This argument is without merit. KRS 139.650 plainly and unambiguously states:

> In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

(Emphasis added.)

It is further provided in KRS 131.175:

> Notwithstanding any other provisions of KRS Chapter 131 to 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have authority to waive the penalty, but not interest, where it is shown to the satisfaction of the department that failure to file or pay timely is due to reasonable cause.

(Emphasis added.)

Under the foregoing statutory provisions, interest must accrue on any unpaid taxes and this interest cannot be waived by the DOR. Penalties can be waived upon a showing of reasonable cause, which the DOR has done with respect to the penalty that was assessed to [redacted]. See also 103 KAR 1:040. On the other hand, the law clearly and specifically denies the DOR the authority to go further and waive interest that accrues on unpaid taxes or tax assessments.

For the reasons stated above, the outstanding liability totaling $[redacted] set forth above is a legitimate liability of [redacted] Inc. due to the Commonwealth of Kentucky.

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 40601-3714,

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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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