



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] Corp., Inc.

Contact: [REDACTED] Corp., Inc

Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2011-63
July 29, 2011

Telecommunications Tax refund denial
for the periods April 1, 2006 through December 31, 2007

FINAL RULING

Period	Tax	Interest as of 7/29/2011	Totals
4/1/06 - 12/31/07	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])
TOTAL	(\$ [REDACTED])	(\$ [REDACTED])	(\$ [REDACTED])

The Kentucky Department of Revenue ("DOR") has denied a refund claim submitted by [REDACTED] Corp. ("[REDACTED]"). The pertinent amount of the refund claim and the period to which it relates is set forth above. The Department's denial of the refund claim has been protested in accordance with KRS 134.580(3) and 103 KAR 1:010.

██████████ is a regional telecommunications company that has been providing telecommunications services for ██████████, ██████████, ██████████, and ██████████ counties in Kentucky for more than ██████████ years. ██████████ maintains a physical plant including poles, lines and switching facilities as well as buildings and offices. ██████████'s main revenue comes from providing communication services as an Incumbent Local Exchange Carrier (“ILEC”).

At issue is whether certain funds received by ██████████ are “for the provision of communications service”, a prerequisite for applying the gross revenue tax (“GRT”). Specifically,

- (1) Whether ██████████'s payments from the United Service Fund (“USF”) falls within the exclusion provided in KRS 136.602(6)(b);
- (2) Whether directory assistance and database charges are exempt from tax;
and
- (3) Whether regulated non-recurring charges are exempt from tax

KRS 136.602(6) states in part

(6)Gross revenues means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service of communications service in this state excluding amounts received from:

* * * *

(b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;

Regarding issue (1), ██████████ contends that the funds at issue are not received for the provision of communications services.

However, disbursements ██████████ receives from the USF are to subsidize the cost of telecommunications service in areas where it is especially expensive, such as in

some of the rural areas this provider services. In section 254(d) of the Telecommunications Act of 1996, Congress mandated that "Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." DOR does not take the position that the USF charges which ██████████ collects from its customers on monthly billings are part of gross revenues subject to the tax. Federal law allows telecommunications providers to add USF charges to the sales price charged to customers and therefore these permitted charges are included within the KRS 136.602(6)(b) exemption.

Regarding issue (2), ██████████ charges its customers for directory assistance and database services. ██████████ contends that is merely an information service and not subject to tax.

It is DOR's position that ██████████ is doing more than providing information to its customers. Rather, ██████████ is communicating that information to its customers telephonically at the time and place of the customer's choosing. The directory assistance charge is not for the information provided (similar information is available free of charge in paper directories or online). It covers the costs of transmitting the information to the customer. Charges for directory assistance are therefore charges for a communications service and should be included in ██████████'s gross revenues.

Regarding issue (3), ██████████'s regulated services consist of three basic types of services: activation service fee, long distance carrier processing and non-communication account maintenance services. ██████████ originally applied the GRT to the funds received from all of the above regulated services but now believes that all these charges involve services necessary to facilitate and maintain communications access rather than being an actual provision of the service itself.

It is DOR's position that these fees are for the provision of communications services and fall within the KRS 136.602(2) definition of "gross revenues" and are therefore taxable. KRS 139.195(5)(a) states "Communications service" means telecommunications services and ancillary services.

Based upon the foregoing, and the information supplied as part of or in connection with ██████████'s protest and supporting statement, the Department has determined that the sales tax refund 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 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,
FINANCE AND ADMINISTRATION CABINET



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

cc:

[REDACTED]

[REDACTED] PLLC

[REDACTED]