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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] Company LP

Contact: Attention: [REDACTED]  
[REDACTED] Co. LP

FINAL RULING NO. 2013-19  
March 19, 2013

Tangible Personal Property Tax Assessment  
Tax year 2011

**FINAL RULING**

The Department of Revenue ("Department") has a tangible personal property ad valorem tax assessment for the tax year 2011 (year ending December 31, 2010) "the assessment year" against [REDACTED] Company LP. ("[REDACTED]"). [REDACTED] has claimed a true value of \$ [REDACTED] for its tangible personal property for the assessment year. See KRS 132.825(10). For the assessment year, [REDACTED] filed the Department's Form 61A500 for Property Tax for Communications Service Providers and Multichannel Video Programming Service Providers. See KRS 136.600 to 136.660 and 132.825. [REDACTED] has accepted the Department's assessed value; therefore, the valuation of its property is not at issue.

At issue is how the assessed (and undisputed) value of the property should be allocated to the various classes of property for purposes of the applicable state tax rate and whether any local exemption applies. Specifically, the issue is whether or which of [REDACTED]'s tangible property is to be classified as Schedule A Tangible Personal Property which is subject to the state tax set forth in KRS 132.020(1)(r) and not exempt from local taxation under KRS 132.200 or as Schedule B Commercial Telephonic Equipment, which would be exempt under KRS 132.200(5) and subject to the lower state tax rate prescribed in KRS 132.020(1)(j).

██████████ contends that the allocation of the assessed value should be as follows:

Tangible Property	\$ ██████████
Telephonic Equipment	\$ ██████████

In support of the allocation, ██████████ states:

██████████ filed its 2011 property tax return in accordance to guidelines set forth by the Department on how the Department classifies tangible versus telephonic equipment. Per the guidelines set forth, Multiplex Equipment and Digital Cross Connect Equipment are classified as telephonic. The equipment ██████████ deploys includes both these types of equipment. As such, ██████████ classes 456500 and 474130- Cross Connects (DSX & Optical) - were classified as telephonic equipment, Class III. ██████████ class 456570- DWDM was classified as telephonic equipment, Class II. ██████████ class 456690- Digital Circuit Multiplication Equipment was classified as telephonic equipment, Class II. The Department failed to adhere to its own guidelines in classifying tangible versus telephonic equipment. Common logic would infer since ██████████ is a long distance telephone company engaged in the business of telephonic activities that at least a portion of the equipment would qualify as telephonic equipment per KRS Statutes.

██████████ provided the subsequent definitions of the equipment in dispute:

1. Dense Wavelength Division Multiplexing (DWDM) is the preferred method of obtaining relief in fiber constrained routes. It is technology that uses electronic means to couple multiple transport systems together for transmission over a pair of fibers.
2. Digital Circuit Multiplication Equipment (DCME) is a means of increasing the effective capacity of primary rate and higher level Pulse Code Modulator (PCM) hierarchies. DCME is used on expensive international fiber cable or satellite transmission facilities to gain additional capacity at significantly less cost than buying additional transmission facilities.
3. Cross Connects (DSX & Optical) are distribution system equipment used to terminate and administer communication circuits. In a wire cross connect, jumper wires or patch cords are used to make circuit connections. In an optical connect, fiber patch cords are used.

It is the Department's position that the property allocated as Telephonic Equipment by ██████████ does not qualify for treatment as commercial telephonic equipment under KRS 132.020(1)(j) and KRS 132.200(5) because the property does not broadcast electronic signals to an antenna or broadcast electronic signals over the air within the meaning of these provisions. See also Owensboro-On-The-Air, Inc. v. Tinius, Daviess County Property Valuation Administrator, 551 S.W. 2d 831 (Ky. App. 1977); Satellite Broadcasting and Communications Association v. Federal Communications' Commission, 275 F.3d 337 (4<sup>th</sup> Cir. 2001). Instead, ██████████ uses land lines (a solid medium telephone line such as a metal wire or fiber optic cable) to transmit its service to those who are allowed by ██████████ to receive it (i.e., paying customers). The administrative interpretation of the term, as reflected in the assessment in question, is entitled to deference and should not be disturbed. See Commonwealth, ex re. Stumbo v. Kentucky Public Service Com'n, 243 S.W.3d 374, 380 (KyApp. 2007); Commonwealth ex rel., Beshear v. Kentucky Utilities Co., 648 S.W.2d 535, 537 (Ky. App. 1982).

All property in the Commonwealth is subject to ad valorem taxation unless an exemption provided for in or authorized by the Constitution applies. Ky. Const. § 172; KRS 132.190(1). The Department's assessments are presumed valid and the taxpayer bears the burden of proving otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206, 209-10 (Ky. 1998). Exemptions from taxation, such as the exemption in KRS 132.200(5), "are disfavored and will be narrowly or strictly construed, with all doubts resolved against the exemption's application, and with the burden placed on the party claiming the exemption to show the party's entitlement to it." Popplewell's Alligator Dock No.1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky. 2004).

Based on the above, the proper classification of ██████████'s tangible personal property is Tangible Schedule A Property for the assessment year at the following value:

2011                      \$ ██████████

This 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.

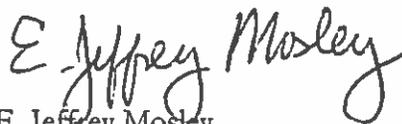
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

