



STEVEN L. BESHEAR  
Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] Inc.

Contact:

[REDACTED]  
Attn: [REDACTED]  
[REDACTED]

FINAL RULING NO. 2013-32  
June 7, 2013

Partial Refund Denial Due to an Assessment of Kentucky Corporation Income Tax and Limited Liability Entity Tax for Fiscal Years Ended March 31, 2006 & March 31, 2008

FINAL RULING

The Kentucky Department of Revenue ("the Department") reduced the fiscal year ended March 31, 2008 refund of [REDACTED], Inc. ("the Taxpayer") from \$ [REDACTED] to \$ [REDACTED]. The reduction was due to adjustments made to the Kentucky taxable income for fiscal year ended ("FYE") March 31, 2006 and an adjustment to the cost of goods sold deduction on the Kentucky Schedule LLET for FYE March 31, 2008. \$ [REDACTED] of the refund was applied to the FYE 3/06 liability with \$ [REDACTED] applied to tax, \$ [REDACTED] to interest, \$ [REDACTED] to the late payment penalty and \$ [REDACTED] to the declaration penalty. \$ [REDACTED] of the FYE 3/08 refund was utilized to pay the additional tax liability and a \$ [REDACTED] late filing penalty for that period. The only issue protested by the Taxpayer was the cost of goods sold disallowance for FYE 3/08. The \$ [REDACTED] unissued refund was applied as follows:

FYE	TAX	INTEREST	PENALTY	TOTAL
March 31, 2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
March 31, 2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue is whether the Department correctly disallowed the cost of goods sold deduction utilized in computing the additional corporate income tax based on the available information. The Taxpayer is in the business of selling film and movie rights, an intangible product, and claimed a deduction for cost of goods sold in computing the limited liability entity tax ("LLET") for FYE 3/08. Film and movie rights are intangible property. WDKY-TV, Inc. v. Revenue Cabinet, 838 S.W.2d 431 (Ky. App. 1992). The Department disallowed such a deduction because the Taxpayer does not sell a tangible product. Therefore, the Taxpayer could not take the cost of goods sold deduction from the gross receipts while computing the LLET.

KRS 141.0401(1)(d) states:

"cost of goods sold" means: 1. Amounts that are: a. Allowable as cost of goods sold pursuant to the Internal Revenue Code and any guidelines issued by the Internal Revenue Service relating to cost of goods sold, unless modified by this paragraph; and b. incurred in acquiring or producing the tangible product generating the Kentucky gross receipts.

In addition, KRS 141.0401(1)(d)(3) states:

for any activity other than manufacturing, producing, reselling, retailing, or wholesaling, no costs shall be included in cost of goods sold.

The Taxpayer is a company selling an intangible product and therefore cannot compute cost of goods sold and gross profits for purposes of computing the LLET, even if allowed by the Internal Revenue Code. KRS 141.0401(2) and (3) not only limit cost of goods sold to tangible products, but limits it to tangible products for manufacturing, producing, reselling, retailing and wholesaling activities. Any other activities, even if tangible products are involved, are not eligible to compute cost of goods sold and gross profits for purposes of computing AMC tax or LLET.

Therefore, based upon the available information, and the applicable statutes, the Taxpayer's refund request is denied for fiscal year ended March 31, 2008. The Taxpayer's protest is hereby 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.

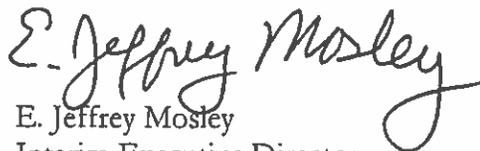
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED



