COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K07-R-01

SAND LAKE PROPERTIES, LTD. **APPELLANT**

V. **ORDER NO. K-20006**

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE **APPELLEE**

After consideration of all evidence presented at the hearing on October 16, 2007 and having reviewed the case including briefs and being otherwise sufficiently advised, the Kentucky Board of Tax Appeals hereby enters the following order:

Sand Lake Properties, Ltd. was a Limited Partnership organized and existing pursuant to a formal Limited Partnership agreement dated October 1, 1993.

On March 7, 2005, the sole asset of the partnership, a parcel of land, was sold for $1,900,000.00.

On March 18, 2005, the Governor of Kentucky signed into law House Bill 272 which required limited partnerships to be treated as corporations for purposes of corporation income tax, and to pay income tax at the "entity level" rather than the partner level, for periods beginning January 1, 2005.

In March 2006, the Appellant filed its 2005 Form 765 Kentucky Partnership Income Tax Return. That return accurately listed the amount of income Appellant earned from the sale. However, Appellant paid no income tax, on the entity level, for its 2005 income.

Appellant argues that because the partnership sold its sole asset and was dissolved prior to the enactment of House Bill 272 on March 18, 2005, that the new law cannot be made to apply to this transaction based upon a variety of legal arguments.

The Department of Revenue, however, argues that in light of the specific language of the new law it applied to all tax years beginning on and after January 1, 2005, and therefore that this transaction should have been reported and taxed as income on the entity level.

According to the tax returns placed of record income taxes were paid by individual partners on their own returns (except non-resident partners), rather than taxes being paid on the entity level.

After hearing the evidence and arguments of the parties the sole issue for our determination is whether the enactment of the new law after the date of sale and dissolution required the Appellant to file its return and pay taxes on the "entity level" rather than on the "partner" level.

Revenue's pursuit of this case is driven by a technical reading of the statute.

It is clear, however, that the taxpayers operated legally according to the law in effect at the time of the transaction in question. A change in the law which did not become effective until after the partnership was dissolved can only be applied in this case by a meaningless technicality. However, the application of that technicality in this case would work a hardship not only on the taxpayer but on all taxpayers of Kentucky because it would trigger a series of amended returns, refund claims, and interest being paid by the Commonwealth.

In this matter the amount of difference in the tax to be collected would be more than

offset by the increased burden to the Commonwealth at what appears from the evidence to equal, if not exceed, the benefit to be received.

One principle controls in this matter. The law abhors an absurdity.

To require the taxpayer here to go back and amend returns, seek refunds, collect interest and income the cost to everyone involved, including the Commonwealth, for the merely technical purpose of realigning tax forms bears a striking resemblance to the type of absurdity the law abhors.

For the foregoing reasons, the final order appealed from in this matter is overruled.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER
AND MAILING: February 22, 2008

KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING

NANCY MITCHELL
CHAIR