

**COMMONWEALTH OF KENTUCKY
BOARD OF TAX APPEALS
FILE NO. K08-R-10**

**PUBLISHERS PRINTING COMPANY
AND SUBSIDIARIES**

APPELLANT

v.

ORDER NO. K-20589

**FINANCE AND ADMINISTRATION CABINET
COMMONWEALTH OF KENTUCKY**

APPELLEE

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The Kentucky Board of Tax Appeals having conducted a hearing, reviewed and considered all submissions by all parties and being sufficiently advised now and hereby renders the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Publishers Printing Company, LLC and Subsidiaries are all organized and existing under the laws of Kentucky and all conduct substantial business here. They are all involved in the printing, publication and sale of trade magazines which they distribute all over the U.S.

2. Some of the subsidiaries are holding companies for various assets, leasing companies for equipment, pre publishing organizations and the like. But all are involved with the business of Publishers or its owners. And at all pertinent times, Publishers Printing Company, LLC (hereinafter, Publishers) owned at least 95 percent of each subsidiary.

3. One of the few things the parties substantially agreed on was that the tax years subject of this appeal are 1988 through 1991. Both iterate that the Appellants are six Kentucky corporations. In fact, they are not. Publishers is an LLC. But for the purposes of this decision, we make no distinction between the LLC and the corporations.

4. The Appellants filed a unitary tax return for the years in question. Publishers was qualified to do business only in Kentucky and all the income producing activity of the Appellants was conducted in Kentucky.

5. All the magazines printed by Publishers were shipped by mail or common carrier from Kentucky.

6. Only Denver Press, of the six associated entities, conducted business outside of Kentucky. This was done, only and solely, in Colorado.

The Unitary Tax Return of Appellants.

7. Appellants filed a unitary tax return for 1988-1991 only in Kentucky and Colorado. In those returns, they combined the income and expenses of Publishers and the five subsidiaries. Then, they apportioned income between those two states.

8. Appellants didn't file tax returns anywhere else. And in apportioning their income between Kentucky and Colorado, Appellants failed to account for a substantial portion of their income. The total amount of income of Appellants not apportioned and therefore not taxed for the subject period is \$13,618,941. This figure comprises approximately 40% of the income of Appellants for the subject period.

9. Appellants claimed tax overpayments of \$1,132,905 for the subject period. The Dept of Revenue ruled that the unitary return filed by Appellants distorted the extent to which each of the Appellants' business activity was conducted within Kentucky.

10. The filing of the appeal is timely.

CONCLUSIONS OF LAW

1. Under KRS 134.580, a claim for refund must be made within 4 years after the date the return is due for any alleged overpayment.

2. No refund claim may be made after that time, except upon specific grounds. The claim for a refund of taxes for the subject period is barred by the applicable statute of limitations, KRS 134.580.

3. We conclude that under applicable rule and law, all property and payroll of Appellants was within the Commonwealth of Kentucky. Therefore, all net income of Appellants is taxable by Kentucky under KRS 141.010(14) (a). The apportionment of less than 60% of the income of Appellants to Kentucky is unfair, and unreasonable. It does not fairly represent the extent of the business activity of Appellants in Kentucky.

4. With scant exception, Appellants activities are within Kentucky. The only other state that could possibly receive any apportionment is Colorado. Having escaped taxation on a substantial portion of its income by apportionment, no refund may be made on the unitary return claim, inasmuch as they do not fairly represent the extent of Appellants' business activities in Kentucky and a large portion of income has escaped tax here.

5. Appellants have not demonstrated a unity of operations, or a unity of use. These operations are not integrated. Rather, the five subsidiaries exist to serve Publishers, and it does not serve them.

6. The Board is not persuaded that Appellants conducted a unitary business in Kentucky during the subject time period. There is simply not enough operation anywhere outside Kentucky to conclude anything else.

JUDGMENT

Therefore, the Ruling of the Department of Revenue is Affirmed.

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 an 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 upon 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 KBTA 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: January 20, 2010**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING.**

**BILL HAYES
CHAIRMAN**