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GOVERNOR

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FINANCE AND ADMINISTRATION CABINET
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2006-01
January 4, 2006

FINAL RULING

The Kentucky Department of Revenue (DOR) currently has a refund claim for sales and use tax from [REDACTED] (hereafter "taxpayer") for the tax period of June 1, 2000 through June 30, 2000. The following table provides a breakdown of the amount of tax refund request as well as accrued interest as of the date of this final ruling.

Period	Tax Due	Interest As of 9-28-2005	Penalty As of 9-28-2005	Total Due As of 9-28-2005
June 1, 2000 – June 30, 2000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The DOR issued the taxpayer an assessment for use tax for a Dixon Lawn Mower purchased on [REDACTED], 2000. The taxpayer was billed based on a field audit conducted. When the taxpayer received the bill, he stated that he had paid the tax at time of purchase. However, DOR records revealed that the taxpayer had signed a Farm Machinery Exemption Certificate. The signed certificate indicates the purchaser's claim for exemption under the provisions of KRS 139.480(11). If a purchaser issues an exemption certificate to the seller at the time of the sale and the product sold is subsequently determined to be taxable, then the liability for sales tax on the product is on the purchaser rather than the seller (KRS 139.490). It is the DOR's position that the Dixon Lawn Mower does not qualify for the Farm Machinery Exemption, and the taxpayer does not dispute this position. The DOR requested a copy of the invoice reflecting the purchase price and the tax. The taxpayer stated that he was not provided with an invoice from the business at the time of purchase. The DOR mailed the taxpayer a copy of the signed exemption certificate on [REDACTED], 2004.

In a letter dated [REDACTED], 2004, the taxpayer stated that the farm machinery exemption certificate had been forged. The taxpayer provided a copy of his driver's license to show comparison of signatures. Additionally, the taxpayer included a check for the tax assessment with this letter, but maintained that he did not owe this assessment because he had paid the tax at date of purchase of lawn mower. He formally protested the assessment and requested refund of the tax totaling \$[REDACTED] for the lawn mower.

This request for refund was denied by the DOR's Office of Sales and Excise Tax, Division of Sales and Use Tax. The taxpayer was billed for the accrued interest on the tax assessment.

A letter from the taxpayer dated [REDACTED], 2004 included a check for \$[REDACTED] for the accrued interest due, but also stated that he was continuing his protest of the assessment and expected a complete refund. The protest was then transferred to Division of Protest Resolution

After review of the documentation, a letter was sent from this office to the taxpayer on [REDACTED], 2005 denying the refund request.

On [REDACTED], 2005, another letter was sent reiterating the DOR's position. On [REDACTED], 2005, the taxpayer telephoned stating that he wanted a teleconference to discuss the issue. A letter was sent [REDACTED], 2005, indicating that the taxpayer should send the DOR his request for date and time for scheduling. After no response, another letter was sent [REDACTED], 2005, with the same request but indicating the DOR's intent to initiate administrative action. The taxpayer was given until [REDACTED], 2005 to respond. The taxpayer has failed to respond or to submit a supporting statement as required by KRS 131.110(1) that would allow the DOR a basis for reconsideration of the sales and use tax refund claim referenced above.

KRS 131.110(1) states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the Cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

The courts have held that this statutory provision (KRS 131.110(1)) is "mandatory in nature" and that failure to submit documentation as it requires will result in the taxpayer's loss of the right to further review of the assessment or refund denial in question. Scotty's

Construction Co. v. Revenue Cabinet, Ky. App., 779 S.W.2d 234 (1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

The sales and use tax assessment (plus accrued interest and fees) is deemed a legitimate liability of the taxpayer due the Commonwealth of Kentucky.

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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

[REDACTED]
January 4, 2006 – Final Ruling No. 2006-01

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

