



**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

Ernie Fletcher
Governor

Room 383, New Capitol Annex
Frankfort, Kentucky 40601
Phone: (502) 564-4240
Fax: (502) 564-6785

John R. Farris
Secretary

In the matter of:

██████████ CORPORATION

Contact: ██████████, CPA
██

FINAL RULING NO. 2006-61
August 23, 2006

Sales and Use Tax assessment
Period January 1, 1998 through June 30, 2001

FINAL RULING

The Kentucky Department of Revenue (the "Department") has outstanding sales and use tax assessments against ██████████ Corporation for the periods January 1, 1998 through June 30, 2001. The following schedule reflects the total underpayment, including applicable interest accrued to date and the applicable fee for each period.

Period	Tax	Interest as of 08/23/06	Fee	Penalties	Total per Period
CYE 12/98	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
CYE 12/99	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
CYE 12/00	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01 – 06/01	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

██████████'s primary business activity is selling ██████████ supplies. They have one location in ██████████, Kentucky.

By letter dated ██████████, 2002, ██████████ Corporation's protest was delivered by United States Postal Service mail to the Department of Revenue disputing the above referenced assessments. For the reasons that follow, these assessments are a legitimate tax liability of ██████████ Corporation to the Commonwealth of Kentucky.

At issue is whether the taxpayer accepted three (3) exemption certificates and a direct pay letter in good faith.

It is the taxpayer's position they have complied with the requirements set forth in KRS 139.270 and accepted the exemption certificates in good faith. The taxpayer has submitted copies of the exemption certificates in question to support its position.

KRS 139.270 states:

(1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property:

(a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or

(b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.

This relief from liability does not apply to a retailer or seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claiming of an exemption.

(2) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:

(a) Accepts a properly completed resale certificate or certificate of exemption; and

(b) Maintains a file of the certificate in accordance with KRS 139.720.

(3) If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (2) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

After reviewing the documentation provided by the taxpayer, it is the Department of Revenue's position that the three certificates in question failed to meet the good faith requirements of KRS 139.270, as indicated below.

The certificate received from ██████████ Company had critical missing information as to where the machinery alleged to be exempt was to be installed, the cost of the property to be purchased and a valid description of the property purchased. Therefore, the certificate is invalid and incomplete and, as such, the sale is taxable.

The certificate received from ██████████, Inc. had an invalid account number and indicated that it was for a single purchase. The sales in question all pertain to periods after the date on the certificate. Therefore, a complete and valid exemption certificate was not on file from this company for the items picked up in the audit.

The certificate received from ██████████, Inc. did not have a description of the property to be purchased. Therefore, this certificate was considered invalid due to the requirements in KRS 139.270(2)(a) not being met.

The final issue in question is a direct pay letter received from ██████████ Inc. ("██████████") given by ██████████ for equipment purchased for the ██████████. ██████████ contends that they accepted this certificate in good faith because ██████████ used the equipment purchased while working on a job at the Toyota Plant installing permanent fixtures to the plant. The direct pay letter states that only tangible personal property which will be incorporated into the ██████████ plant facility can be purchased tax free. The items in question were ██████████, ██████████, ██████████, and ██████████. These items are supplies used by ██████████ in the operation of their business and not installed in the Toyota plant facility. Therefore, these items are taxable.

Based upon the foregoing, the information supplied with the protest and supporting statement, the Department has determined that the sales and use tax audit assessments totaling \$██████████ (plus applicable interest) are deemed legitimate liabilities of ██████████ Corporation 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.

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

the first of these is the fact that the majority of the population is now living in urban areas. This has led to a concentration of people in a few large cities, which has in turn led to a number of problems. One of the most serious is the lack of adequate housing. In many of these cities, the housing is of a very poor quality and is often overcrowded. This has led to a number of health problems, particularly in the case of children. Another problem is the lack of adequate sanitation. In many of these cities, there is no proper sewage system, and the waste is often dumped in the streets. This has led to a number of diseases, particularly in the case of children. A third problem is the lack of adequate education. In many of these cities, there are no schools, and the children are often left to fend for themselves. This has led to a number of social problems, particularly in the case of children.

The second of these is the fact that the majority of the population is now living in rural areas. This has led to a number of problems. One of the most serious is the lack of adequate housing. In many of these areas, the housing is of a very poor quality and is often overcrowded. This has led to a number of health problems, particularly in the case of children. Another problem is the lack of adequate sanitation. In many of these areas, there is no proper sewage system, and the waste is often dumped in the streets. This has led to a number of diseases, particularly in the case of children. A third problem is the lack of adequate education. In many of these areas, there are no schools, and the children are often left to fend for themselves. This has led to a number of social problems, particularly in the case of children.

The third of these is the fact that the majority of the population is now living in semi-urban areas. This has led to a number of problems. One of the most serious is the lack of adequate housing. In many of these areas, the housing is of a very poor quality and is often overcrowded. This has led to a number of health problems, particularly in the case of children. Another problem is the lack of adequate sanitation. In many of these areas, there is no proper sewage system, and the waste is often dumped in the streets. This has led to a number of diseases, particularly in the case of children. A third problem is the lack of adequate education. In many of these areas, there are no schools, and the children are often left to fend for themselves. This has led to a number of social problems, particularly in the case of children.

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The fifth of these is the fact that the majority of the population is now living in mountainous areas. This has led to a number of problems. One of the most serious is the lack of adequate housing. In many of these areas, the housing is of a very poor quality and is often overcrowded. This has led to a number of health problems, particularly in the case of children. Another problem is the lack of adequate sanitation. In many of these areas, there is no proper sewage system, and the waste is often dumped in the streets. This has led to a number of diseases, particularly in the case of children. A third problem is the lack of adequate education. In many of these areas, there are no schools, and the children are often left to fend for themselves. This has led to a number of social problems, particularly in the case of children.