



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
501 HIGH STREET  
FRANKFORT, KENTUCKY 40620  
Phone (502) 564-3226  
Fax (502) 564-3875  
www.kentucky.gov

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], INC.

Contact: [REDACTED], INC.

Attn: [REDACTED]

FINAL RULING NO. 2008-86  
November 20, 2008

Use Tax Assessment  
January 1, 2003 through December 31, 2006

### FINAL RULING

The Kentucky Department of Revenue has outstanding use tax assessments against [REDACTED], Inc. ([REDACTED]) for the audit periods January 1, 2003 through December 31, 2006. The following schedule reflects the total remaining liability for this case.

Period	Tax	Interest as of 11/20/08	Penalties	Total per period
01/01/2003-12/31/2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2004-12/31/2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2005-12/31/2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2006-12/31/2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the periods under audit, the corporation operated as a [REDACTED] contractor. [REDACTED] does business mainly in Kentucky and [REDACTED].

At issue are the following:

Issue 1: Whether tax was correctly charged on ██████████ materials purchased by ██████████ after the expiration of the ██████████ Enterprise Zone exemption.

Issue 2: Whether tax was properly assessed on certain tangible personal property claimed to have been purchased from out of state vendors and used on out of state projects.

Regarding Issue 1, ██████████ entered into a ██████████ year contract with the ██████████ Housing Authority for the years 2003 and 2004 to complete the ██████████ Housing Complex located in the ██████████ Enterprise Zone. According to the provisions of KRS 154.45-090(2), “██████████ materials used in remodeling, rehabilitation, or new construction within an enterprise zone shall be exempt from sales and use taxes provided for in KRS Chapter 139.” ██████████ contends that the existence of the contract negated any tax consequences of the expiration of the ██████████ Enterprise Zone. ██████████ contends that any purchases of tangible personal property purchased to fulfill the contract are entitled to the enterprise zone exemption, regardless of date of purchase.

KRS 154.45-050(2) states in part:

Designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of designation and ending on December 31 of the twentieth year following designation.

103 KAR 26:070 Section 1 states in part:

All sales to contractors, subcontractors, builders or owners of building materials, fixtures and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling or repairing such structure or improvement are subject to the sales and use tax at the time of sale to the type of contract (lump-sum and materials, cost plus fixed fee or other) for which the purchase is made.

The enterprise exemption for the ██████████ Enterprise Zone ended on December 31, 2003. This expiration date was determined when the enterprise zone was established and the Kentucky General Assembly took no further action to extend the life of the twenty-year zones. Accordingly, since the exemption for the enterprise zone no longer existed, any purchase of tangible personal property made by the contractor after December 31, 2003 for the fulfillment of the ██████████ contract is subject to tax at the time of purchase by the contractor.

In regard to Issue 2, ██████████ contends that various purchases were made from out of state vendors and that the items so purchased were delivered to and used on ██████████ projects only.

KRS 139.310 states:

An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased on and after July 1, 1990, for storage, use, or other consumption in this state at the rate of six percent (6%) on the sales price of the property.

Revenue requested information documenting ██████████'s claim that the items in question were delivered to a job site in ██████████. The documentation, in the manner of invoices, indicates the items in question were delivered to a Kentucky address making the purchases at issue subject to Kentucky use tax. Moreover, ██████████ has presented no evidence that would establish the items in question were used on projects in ██████████.

██████████ did not pay at least 75% of the liability as determined by Revenue. Accordingly, a penalty is assessed under KRS 131.180(2).

Therefore, Revenue's position is the assessments were correctly issued and the outstanding sales tax assessments totaling \$██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████████ Contracting, Inc. due to 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.

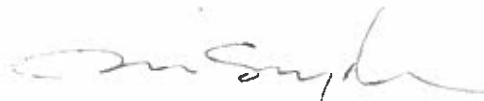
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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



JASON SNYDER  
Executive Director  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED