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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████

FINAL RULING NO. 2013-26
June 15, 2013

Sales and Use Tax
March 22, 2010 to March 31, 2011

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against ██████████ LLC ("██████") for the audit period March 22, 2010 to March 31, 2011. The following schedule reflects the total liability for this case:

Period	Net Tax	Interest as of 06/15/2013	Penalty	Total due per period
03/22/10-12/31/10	\$█	\$█	\$█	\$█
01/01/11-03/31/11	\$█	\$█	\$█	\$█
Totals	\$█	\$█	\$█	\$█

During the periods in question, ██████ was operating as a restaurant and bar. The taxpayer sells food and beverage for immediate consumption.

Two letters were sent to ██████ in an attempt to schedule a mutual audit date. A third letter was sent certified but returned as undeliverable. Due to the lack of a response, two auditors made a visit to ██████ and spoke with its representative who signed off on a confirmation letter agreeing to a date on which she would make ██████ records available and meet with the auditors. The taxpayer did not keep the appointment. Because there were minimal records, an estimated assessment was created. The estimated assessment was based on the gross receipts from three similar businesses.

In response to the estimated assessment, ██████ submitted a lengthy handwritten letter summarizing business dealings with a former partner that the DOR has treated as a protest pursuant to KRS 131.110 but which did not constitute a supporting statement under the statute. The DOR has repeatedly requested ██████ to submit supporting documentation that would enable the DOR to determine whether the estimated assessments are correct or should instead be reduced. Letters dated ██████, 2012, ██████, 2012 and ██████, 2013 were sent to ██████ requesting supporting documentation but to date no responses have been received.

At issue is whether ██████ has complied with the requirements of KRS 131.110(1) which 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 Department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

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

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in a taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S.W. 2d 234 (Ky. App. 1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide appropriate documentation in support of their denials of tax liability, despite being given ample opportunity to do so. The same is true in this matter.

A penalty has been assessed pursuant to KRS 131.180(2) because of ██████ failure to have timely paid at least 75% of the tax determined to be due by the DOR. ██████ has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$ ██████ (plus applicable penalty and interest) is a legitimate liability of ██████ LLC 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 40601-3714, 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 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. Final 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

██████████ LLC

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET

A handwritten signature in black ink that reads "E. Jeffrey Mosley". The signature is written in a cursive, flowing style.

E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The next section describes the methodology used in the study, including the data sources and the statistical techniques employed. The results of the study are then presented, followed by a discussion of the findings and their implications. Finally, the paper concludes with a summary of the main points and suggestions for future research.

The research was conducted using a quantitative approach, with data collected from a large sample of participants. The results show a significant positive correlation between the variables studied, indicating that the research hypothesis was supported. The findings have important implications for the field and suggest that further research is needed to explore the underlying mechanisms.

In conclusion, the study provides valuable insights into the relationship between the variables and highlights the need for continued research in this area. The results are consistent with previous findings and offer new perspectives on the topic.

[REDACTED]