



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

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], LLC

Contact:

[REDACTED], LLC
dba [REDACTED]
[REDACTED]

FINAL RULING NO. 2014-44
December 5, 2014

Sales and Use Tax Assessments
for the periods
August 1, 2008 through July 31, 2012

FINAL RULING

The Kentucky Department of Revenue ("the DOR") has an outstanding sales and use tax assessments totaling \$[REDACTED] against [REDACTED] LLC ("[REDACTED]") for the audit period August 1, 2008 through July 31, 2012. The following schedule reflects the amount of outstanding tax and applicable interest accrued to date:

Period	Tax	Interest as 12/05/2014	Amnesty Assessment Fees	Totals
08/01/08 - 12/31/08	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
01/01/09 - 12/31/09	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
01/01/10 - 12/31/10	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
01/01/11 - 09/30/11	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
10/01/11 - 12/31/11	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
01/01/12 - 07/31/12	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
Total	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

██████████ is a print shop specializing in forms, posters, banners, vinyl signs, screen printing, embroidery and business cards.

At issue is whether certain capital purchases are exempt as machinery for new and expanded industry under KRS 139.480(10).

██████████ contends that certain capital purchases of equipment and machinery are used directly in the production process and therefore are non-taxable under the machinery for new and expanded industry exemption.

According to Kentucky Regulation 103 KAR 30:120, the criteria for the machinery for new and expanded industry exemption are as follows:

- (1) It must be machinery.
- (2) It must be used directly in the manufacturing process.
- (3) It must be incorporated for the first time into plant facilities established in this state.
- (4) It must not replace other machinery. New machinery purchased to replace other machinery in the plant is subject to tax unless the new machinery performs a different function, manufactures a different product, or has a greater productive capacity, measured by units of production, than the machinery replaced.

██████████ has failed to substantiate that the protested equipment and machinery meet the four criteria for the new and expanded industry exemption as required. Specifically, some of the machinery was previously used in Kentucky and other items are replacement machinery with no detail provided on whether the replacement machinery has a greater production capacity than the machinery being replaced.

██████████ bears the burden of proving that all of the statutory requirements of each exemption are satisfied with respect to the purchases to which they are alleged to apply. See, e.g., Camera Center, Inc. v. Revenue Cabinet, 34 S.W.3d 39, 41 (Ky. 2000); Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989). Moreover, an exemption from taxation is disfavored and must be strictly construed, with any and all doubts resolved against its application. LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004); Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461, n. 5 (Ky. 2004).

Therefore, since ██████████ has not met its burden of proof with respect to these purchases, it is the DOR's position that the equipment and machinery in question do not qualify for the exemption because of the presumption of taxability unless the purchaser can substantiate the exemption claim.

██████████ has been assessed amnesty fees pursuant to the Kentucky Tax Amnesty Act, KRS 131.400 to 445. Pursuant to KRS 131.440(1)(b)1.b., taxes assessed and collected after the amnesty period (i.e., October 1 through November 30, 2012) for taxable periods ending or transactions occurring prior to October 1, 2011, shall be charged a cost of collection fee of 25% at the time of the assessment. As the above schedule shows, the taxes to which these fees apply were assessed for periods ending or transactions occurring prior to October 1, 2011.

Based upon the foregoing, and absent any information supplied to the contrary with the protest and supporting statement, the DOR has determined that the sales and use tax assessments totaling \$██████████ (plus applicable interest and fees) are legitimate liabilities of ██████████, LLC 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 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 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 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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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.

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET


Aaron M. Ferguson
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc:

[REDACTED], PSC
[REDACTED]