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DEPARTMENT OF REVENUE

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THOMAS B. MILLER  
Commissioner

In the matter of:

██████████, Inc.  
Tangible Personal Property Tax

Contact: ██████████, Inc.  
C/O ██████████

FINAL RULING NO. 2008-68  
September 24, 2008

FINAL RULING

The Department of Revenue currently issued an assessment for tangible property taxes in the amount of \$██████████ for the period of January 1, 2003 through January 1, 2006. A breakdown of the assessment is shown in the chart below:

Tax Year	Tax Due	Interest As of 9-24-2008	Penalty As of 9-24-2008	Total Due As of 9-24-2008
January 1, 2003	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2003	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2004	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2004	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2005	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2005	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2006	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2006	\$██████████	\$██████████	\$██████████	\$██████████
Total	██████████	██████████	\$██████████	\$██████████

██████████, Inc. "██████████" failed to file tangible personal property tax returns for the period January 1, 2003 through January 1, 2006. On ██████████, 2008, the Department of Revenue assessed tangible property tax against taxable assets in accordance with KRS 132.020(1). ██████████ was issued an omitted property tax assessment, in accordance with KRS 132.290, referred to above. The penalty of twenty percent (20%) as required by KRS 132.290 and the interest as required by KRS 131.183 have been assessed as part of this tax liability. The penalty remains unpaid.

On ██████████, 2008, the Department of Revenue received a protest letter from ██████████ requesting waiver of the penalty assessed against the intangible property tax liability. The Department responded to ██████████ with letters on ██████████, 2008, ██████████, 2008, ██████████, 2008 and ██████████, 2008 explaining its liability and requesting payment. The tax and interest have been paid in full. To date, no response or payment of the penalty amounts have been received by the Department. KRS 131.175 and 103 KAR 1:040 authorize the Department to waive penalty for reasonable cause. ██████████ has not established reasonable cause for the waiver of the penalty.

The Kentucky courts have held that KRS 131.110(1) 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, 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 Revenue Department some basis for reconsideration.” Id. at 529.

The courts have held that 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, 779 S.W.2d 234 (Ky. App. 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.

It should also be noted that 103 KAR 1:040 similarly imposes upon a taxpayer an obligation to substantiate or establish reasonable cause warranting waiver or relief from a penalty. By the same token, ██████████ has not established its entitlement to a waiver of the penalty assessed.

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