



STEVEN L. BESHEAR  
Governor

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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], INC.

Contact: [REDACTED], Inc.

Attn: [REDACTED]

FINAL RULING NO. 2010-14  
March 5, 2010

Tangible Personal Property Tax Assessments  
January 1, 2003 through January 1, 2006

### FINAL RULING

The Kentucky Department of Revenue currently has outstanding tangible personal property ad valorem tax assessments against [REDACTED], Inc. ("[REDACTED]"), for the January 1, 2003 through January 1, 2006 tax years. These assessments total \$ [REDACTED] (plus applicable interest and penalties). A breakdown of the assessments is shown in the chart below:

Tax Year	Tax Due	Interest As of 03/05/2010	Penalty 03/05/2010	Total Due As of 03/05/2010
January 1, 2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTALS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

██████████'s states in its protest that it "is a premier ██████████ retailer and wholesaler with locations in ██████████, Kentucky and ██████████ Kentucky." It raises three issues with respect to the outstanding assessments referred to above.

██████████'s first asserts that "a comprehensive track and racking system" used in a building it leases to serve as a warehouse is real property and thus not subject to assessment for property or ad valorem tax purposes as tangible personal property. The information submitted by ██████████'s does not persuade the Department that the property making up this "system" is real property. KRS 132.010(3) defines real property to include "all lands within this state and improvements thereon." The "comprehensive track and racking system" is neither land nor an improvement thereon. This "system" can be readily or easily removed without material damage or injury to the realty and it does not permanently enhance the value of the land, but instead serves the function of enabling ██████████'s to conduct its business on the property while it is a tenant. Under these and the other relevant circumstances presented, this "system" has been properly assessed as tangible personal property.

██████████'s next contends that the assessments include items of property that were fully depreciated or no longer in service as of the relevant January 1 assessment dates. The assessments in question are presumed to be valid and it is the taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). The Department has requested on several different occasions for ██████████'s to submit documentation detailing the dates of disposal, methods of disposal, or replacement of the property or assets in question. ██████████'s has responded that it has no records responsive to these requests. In addition, ██████████'s has acknowledged that its removal of disposed assets from its depreciation schedules has not been accurate. ██████████'s has therefore failed to meet its burden of proof that the assessments in question are incorrect.

Finally, ██████████'s requests that all penalties assessed be abated or waived. Penalties were assessed in accordance with KRS 132.290(3), which states,

(3) All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is paid.

KRS 131.175 authorizes the Department to waive penalties where it is shown to the satisfaction of the Department that failure to file or pay timely is due to reasonable cause. ██████████'s contends that the penalties should be abated or waived because "it feels that it had a reasonable basis for filing [its] returns as it did for the reasons detailed in [its]

protest.”. KRS 131.010(9) defines reasonable cause as “an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation.” *See also* 103 KAR 1:040. ██████’s has not established reasonable cause justifying an abatement or waiver of the penalties in question.

Therefore, the outstanding tangible personal property tax assessments totaling \$██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████’s ██████████ Inc. and are due to the Commonwealth of Kentucky.

This letter is the final ruling of the Kentucky 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



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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

cc:

[REDACTED]  
Attorney at Law  
[REDACTED]