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Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

██████████ P.S.C.

Contact:

██████████  
██████████  
Attn: ██████████, CPA  
██████████

FINAL RULING NO. 2011-60  
August 1, 2011

Omitted Tangible Personal Property Ad Valorem Tax Assessments  
January 1, 2005 through January 1, 2009

### FINAL RULING

The Kentucky Department of Revenue ("the DOR") currently has outstanding omitted tangible personal property tax assessments against ██████████, P.S.C. totaling \$██████████ (plus applicable interest and penalties) for the assessment dates of January 1, 2005, January 1, 2006, January 1, 2007, January 1, 2008, and January 1, 2009. A breakdown of the assessments is shown in the chart below:

Tax Year	Tax Due	Interest as of 8/1/2011	Penalty as of 8/1/2011	Total Due as of 8/1/2011
January 1, 2005	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2006	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2007	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2008	\$██████████	\$██████████	\$██████████	\$██████████
January 1, 2009	\$██████████	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████	\$██████████

██████████ P.S.C. (“the Taxpayer”) protested the omitted assessments detailed above. These assessments were issued because the Taxpayer failed to respond to the DOR’s request to submit the returns for the years indicated or any other information which indicated that the DOR’s records were in error as to this omission. The protest stated “all tangible personal property of ██████████, P.S.C. was transferred to a newly formed company, ██████████, LLP.” Despite the DOR’s written requests of ██████████, 2011 and ██████████, 2011, no documentation has been submitted by the Taxpayer to support or substantiate its protest.

At issue is whether ██████████ P.S.C. 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 that 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 Revenue Department some basis for reconsideration.” Id. at 529.

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 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.

As noted above, the DOR requested, in letters dated ██████████, 2011 and ██████████, 2011, that ██████████ P.S.C. provide documentation to support or substantiate its protest. However, ██████████ P.S.C. has failed to respond and to submit any such documentation that would allow the DOR a basis for reconsideration of the tax liability.

Therefore, the outstanding omitted tangible personal property tax assessments totaling \$ ██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████████ P.S.C. 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 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. 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.

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