



**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

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John R. Farris
Secretary

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2007-01
January 23, 2007

Contraband Cigarette Seizure

FINAL RULING

On [REDACTED], 2006, agents of the Kentucky Department of Revenue seized contraband cigarettes from the premises of [REDACTED] ([REDACTED]) located at the above address.

[REDACTED] is a retail establishment. The cigarettes seized were without stamps or with unreadable stamps. As a retail establishment, [REDACTED] was required by KRS 138.146(6) to notify the Department of Revenue within twenty-four hours of the receipt of any such cigarettes. [REDACTED] failed to notify the Department as required by law. Upon the Department's discovery of the contraband cigarettes, the cigarettes were seized under the authority of KRS 138.165(1) and (2).

By letter dated [REDACTED], 2006, [REDACTED], owner of [REDACTED], petitioned the Department of Revenue for return of the cigarettes and stated that he would pay the penalty or a fee for the return of the seized cigarettes. [REDACTED] also stated that he will check for proper stamps in the future.

[REDACTED] contends that most of the cigarettes in question were purchased from wholesalers, who stamp the cigarettes. [REDACTED] also maintains that they buy in large quantities and do not check the cigarettes for stamps when they are purchased from the wholesalers.

KRS 138.146(6) states:

In the event any retailer shall receive into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, he shall within twenty-four (24) hours notify the department of such fact. Such notice shall be in writing, and shall give the name of the person from

whom such cigarettes were received, and the quantity of such cigarettes, and such written notice may be given to any field agent of the department. The written notice may also be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky. If such notice is given by means of the United States mail, it shall be sent by certified mail. Any such cigarettes shall be retained by such retailer, and not sold, for a period of fifteen (15) days after giving the notice provided in this subsection. The retailer may, at his option, pay the tax due on any such cigarettes according to rules and regulations to be prescribed by the department, and proceed to sell the same after such payment.

KRS 138.165(1) states:

It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-paid cigarettes held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.

KRS 138.165(2) states:

Whenever any peace officer of this state, or any representative of the department, finds any untax-paid cigarettes within the borders of this state in the possession of any person other than a licensee authorized to possess untax-paid cigarettes by the provisions of KRS 138.130 to 138.205, such cigarettes shall be immediately seized and stored in a depository to be selected by the officer or agent. At the time of seizure, the officer or agent shall deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face that any inquiry concerning any goods seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky. Immediately upon seizure, the officer or agent shall notify the commissioner of the Department of Revenue of the nature and quantity of the goods seized. Any seized goods shall be held for a period of twenty (20) days and if after such period no person has claimed the cigarettes as his property, the commissioner shall cause the same to be exposed to public sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale, from the sale shall be paid into the Kentucky State Treasury for general fund purposes.

It is the Department's position that stamps were not correctly affixed to the cigarettes and [REDACTED] failed to contact the Department within twenty-four (24) hours as required by KRS

138.146(6); therefore, the cigarettes were seized by the Department. Accordingly, the contraband cigarettes should not be returned to [REDACTED] per KRS 138.165(1).

Based upon the foregoing, the information provided by [REDACTED] via the supporting statement, the Department has determined that the cigarettes were properly seized by 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 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 within each copy of the petition of appeal.

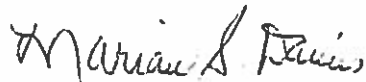
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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) or 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



MARIAN DAVIS
Commissioner
Department of Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

