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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.
Commissioner

In the matter of:

██████████ COMPANY LLC

Contact: ██████████

FINAL RULING NO. 2008-01
January 7, 2008

Contraband Cigarette Seizure

FINAL RULING

On ██████████, 2007, agents of the Kentucky Department of Revenue seized contraband cigarettes from the premises of ██████████ Company LLC ("██████").

██████ failed to maintain a license as required by KRS 138.195(3). ████████ was previously licensed as a sub-jobber. ████████ purchased unstamped cigarettes which is not permitted with a sub-jobber license per KRS 138.195(1). 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 ██████████, 2007, ██████████ protested the seizure of contraband cigarettes.

KRS 138.195(3) states:

Each sub-jobber shall secure a separate license for each place of business from which Kentucky tax-paid cigarettes are made available to retailers, whether such place of business is located within or without this state. Such license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.

KRS 138.195(1) states:

No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.

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 the cigarettes did not have proper evidence of Kentucky tax payment affixed; therefore, the cigarettes were seized by the Department. Furthermore, ██████ has provided no information to contravene the fact that the cigarettes are not properly stamped with tax evidence. These facts render the cigarettes contraband. Accordingly, the contraband cigarettes should not be returned to ██████ per KRS 138.165(1) and (2).

Based upon the foregoing, the Department has determined that the cigarettes were properly seized by the Commonwealth of Kentucky and are now subject to the public sale provisions of KRS 138.165(2).

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.



Company LLC

January 7, 2008 – Final Ruling No. 2008-01

Page 4

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

Very truly yours,
FINANCE AND ADMINISTRATION CABINET

WILLIAM M. COX, SR.

Commissioner

Department of Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED