



ERNIE FLETCHER  
GOVERNOR

DEPARTMENT OF REVENUE  
FINANCE AND ADMINISTRATION CABINET  
200 FAIR OAKS LANE  
FRANKFORT, KENTUCKY 40620  
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ROBBIE RUDOLPH  
SECRETARY

In the matter of:

██████████, INC.

Contact: ██████████  
Senior Tax Manager  
██████████ Inc.

██████████

FINAL RULING NO. 2005-01  
January 5, 2005

Corporation income & license tax assessments for  
Tax years 2000 & 2001

**FINAL RULING**

The Kentucky Department of Revenue has issued corporation income and license tax assessments against ██████████, Inc. for taxable period ended January 26, 2001 and January 25, 2002 totaling \$██████████, plus applicable interest and penalties. The Kentucky Department of Revenue made adjustments to the January 26, 2001 and the January 25, 2002 income and license tax returns that resulted in the assessments. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as accrued interest as of the date of this final ruling.

Tax Year	Type Tax	Tax Due	Interest	Penalties	Total
2001	Income	██████████	██████████	██████████	██████████
2000	License				
2001	License				
Totals					

In a letter dated ██████████, 2004, the corporation protested the computation of the sales factor. The letter indicated that local receipts may have been included twice in the denominator of the factor and the corporation requested more time to research the matter. The Division of Protest Resolution responded that the issue would be considered upon receipt of additional information. The corporation never submitted additional information. In addition, the ██████████, 2004 protest letter indicated that the corporation borrowed money to finance inventory. However, it never submitted evidence to substantiate the claim that money was borrowed to finance inventory.

The corporation also protested in the ██████████, 2004 letter the inclusion of the balance sheet accounts “acquisition reserve” and “deferred income tax” in the license tax computation. The Division of Protest Resolution maintained the balance sheet accounts fall within the statutory definition of “capital” employed in the business in KRS 136.070 Section 2(a) “any other accounts representing additional capital used and employed in the business.” In addition, the inclusion of the balance sheet accounts as capital is consistent with the decision rendered by the Kentucky Court of Appeals in the Kroger Co. vs Department of Revenue, KY App., 614 S.W. 2d 705 (1981). The corporation never submitted further evidence to support its protest of the adjustment.

The corporation was granted additional time to submit further protest of the contested issues. However, the corporation never submitted further information. In Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky. App., 698 S.W.2d 528 (1985), the Court held, *inter alia*, that

“...in a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error.”

Then in Scotty’s Construction Company, Inc. v. Commonwealth of Kentucky Revenue Cabinet, Ky. App., 779 S.W. 234 (1989), the Court mentions, “...the circuit court which held that Scotty’s failure to submit documentation as required by the statute before the issuance of the final ruling had the effect of failure to preserve appellant’s right to review the assessment and on the strength of Eagle Machine set aside the Board’s order and reinstated the determination of Revenue.” The Court of Appeals then reaffirms its opinion in Eagle Machine by stating: “In a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the

assessments were in error." The Court concludes by stating, ". . . the statute is mandatory in nature."

The Division of Protest Resolution granted ██████████ extensions in letters dated ████████, 2004, ████████, 2004, and ████████, 2004 to provide documentation to support its protest. However, the corporation failed to respond or submit any documentation that would allow the Cabinet a basis for reconsideration of the tax liabilities.

After reviewing the applicable statutes and case law, it is the position of the Finance Cabinet that the income and license tax assessment issued against the corporation for taxable periods ended January 26, 2001 and January 25, 2002 are valid liabilities due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

#### APPEAL

You may appeal this 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 ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

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.

██████████, Inc.

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

Sincerely,

FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN, Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

