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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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JOHN MAY
Commissioner

In the matter of:

[REDACTED] INC.

Contact:

[REDACTED]

FINAL RULING NO. 2007-31
August 21, 2007

Gasoline and Special Fuels Tax and Petroleum Storage Environmental Fees assessments
for the period
January 1, 1996 through April 30, 2001

FINAL RULING

The Kentucky Department of Revenue has outstanding tax assessments against [REDACTED] Inc. ([REDACTED]) for the period January 1, 1996 through December 31, 1998 and for the period January 1, 1999 through April 30, 2001. The following schedule reflects the total underpayment and applicable interest accrued for each period.

| Period | Tax (055) | Interest as of 08/22/07 | Fees | Penalties | Total |
|-------------------|---------------|-------------------------|---------------|---------------|---------------|
| 01/01/96-01/31/96 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 07/01/96-07/31/96 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 09/01/97-12/31/97 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01/01/98-12/31/98 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01/01/99-12/31/99 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01/01/00-07/31/00 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 12/01/00-12/31/00 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Subtotal | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |

| Period | Tax (077) | Interest as of 08/22/07 | Fees | Penalty | Total |
|-------------------|---------------|-------------------------|---------------|---------------|---------------|
| 01/01/96-01/31/96 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| 07/01/96-07/31/96 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| 09/01/97-12/31/97 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| 01/01/98-12/31/98 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| 01/01/00-07/31/00 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| 12/01/00-12/31/00 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| Subtotal | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| TOTAL AMOUNT DUE: | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |

██████████ is a wholesale fuel distribution corporation located in ██████████, Kentucky. The Department of Revenue, Division of Miscellaneous Taxes, Road Fund Tax Branch, Motor Fuels Tax Section conducted office audits for the period January 1996 through December 31, 1998, and the period January 1999 through April 30, 2001 with a portion of the audits conducted as field audits at ██████████'s location in ██████████, Kentucky.

At issue is whether the Department of Revenue properly assessed tax on receipts from the sale of special fuels based on the provisions under KRS 138.220 Gasoline and Special Fuels Tax, and whether the Department properly assessed fees for underground storage tanks provided under KRS 224.60 Environmental Protection – Underground Storage Tanks.

During the first audit for the period January 1, 1996 through December 31, 1998, the Department of Revenue disallowed certain tax credits that ██████████ had taken for state or local government entities, agricultural, and residential heating for which valid documentation was not provided.

The Department conducted the second audit at ██████████ for the period January 1, 1999 through April 30, 2001. During this audit, the Department disallowed credit taken by ██████████ for agricultural and residential heating fuel use for which no valid tax exemption certificates were presented. In addition, ██████████ had not remitted the Petroleum Storage Tank Environmental fees to the Commonwealth. The fees are required to be reported and paid to the Department of Revenue at the same time as the gasoline and special fuels taxes are reported and paid. The petroleum environmental assurance fees are paid by dealers on each gallon of gasoline and special fuels received in the Commonwealth. ██████████ submitted a protest of the tax assessment to the Division of Miscellaneous Taxes regarding the disallowed tax credits and the additional fees assessed for underground storage tanks. ██████████ contended that the audit assessment was incorrect because the sales transactions were tax exempt. Additionally, ██████████ contended that it was unaware of excise fees owed the Department for underground fuel storage tanks. ██████████ also protested the accrued interest for the entire audit periods.

The protest remained unresolved with no payment remitted on any portion of the tax liability. The case was transferred to the Finance and Administration Cabinet, Division of Protest Resolution (“the Division”) on ██████████, 2006 for resolution of the two audits.

By letters dated ██████████, 2006, ██████████, 2006, and ██████████, 2006, the Division repeatedly requested that ██████████ submit documentation to support the protested issues of the audits. The Division granted extensions to submit information that would constitute the supporting statement required by KRS 131.110(1). ██████████ requested a conference on ██████████, 2006 to discuss the protest. The conference was scheduled, but ██████████ cancelled the day of the conference. ██████████ asked to re-schedule the conference but provided no specific date. Throughout the months of ██████████, ██████████, and ██████████ 2006 the Division asked ██████████ to submit dates for re-scheduling the requested conference. By letter dated ██████████, 2007, ██████████’s attorney provided the available dates for the conference. By letter dated ██████████, 2007, the Division agreed to the conference date of ██████████, 2007, and at ██████████’s request via telephone call on ██████████, 2007, changed the conference to a teleconference. The Division asked that ██████████ submit the supporting documentation prior to the conference to allow the Division time for review. ██████████ submitted no documentation.

The teleconference was held on ██████████, 2007. ██████████ requested that the Division provide copies of the payment history of all the bills assessed under audit. ██████████ agreed during the conference that when it received this information, it would respond and provide its supportive documentation within ten (10) days. By letter dated ██████████, 2007, the Division submitted this information to ██████████ and to its tax representatives. By letter dated ██████████, 2007, ██████████’s representative requested an extension of time to provide the documentation in support of its protest.

By letter dated ██████████, 2007, the Division advised ██████████ that it had failed to provide the documentation supporting its protest. The Division further stated that this documentation would have to be received by ██████████, 2007, or appropriate administrative action would be taken. However, ██████████ did not respond to this letter.

The Department of Revenue’s position is that ██████████ has failed to comply 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 Cabinet 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 Department with “something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (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 held that this statutory provision (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, Ky. App., 779 S.W.2d 234 (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.

Therefore, the outstanding gasoline and special fuels tax assessments totaling \$██████████ plus applicable interest are legitimate liabilities of ██████████, Inc. due 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 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



DONALD S. GUIER
Executive Director
Office of Legal Services

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

