



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
501 HIGH STREET  
FRANKFORT, KENTUCKY 40620  
Phone (502) 564-3226  
Fax (502) 564-3875  
www.kentucky.gov

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

████████████████████ CO INC

Contact: ██████████  
Certified Public Accountant  
████████████████████

FINAL RULING NO. 2010-05  
January 29, 2010

Special Fuels Tax and Petroleum Environmental Assurance Fees  
July 1, 2006 through December 31, 2008

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding special fuel tax and petroleum environmental assurance tank fee assessment against ██████████ Co. Inc. ("██████") for the audit period July 1, 2006 through December 31, 2008. The following schedule reflects the total liability for this case.

Type Tax	Period	Net Tax	Interest as of 1/29/10	Total due per period
Special Fuels	7/1/06-12/31/06	\$ ██████████	\$ ██████████	\$ ██████████
Petroleum Storage Fee	7/1/06-12/31/06	\$ ██████████	\$ ██████████	\$ ██████████
	Totals	\$ ██████████	\$ ██████████	\$ ██████████

Pursuant to KRS 138.220 and 224.60-145, an excise tax and a petroleum environmental assurance fee are imposed upon each gallon of special fuels received in this state. During the audit period, ██████████ engaged ██████████ Company Inc. ("██████") as a contract miner to operate ██████████'s mining operation at ██████████, Kentucky. As part of this contract, ██████████ sold fuel from its bulk storage tank to ██████████ for use in the mining operation. The price of the fuel consumed was deducted from the amount ██████████ billed ██████████ for the contract mining.



No special fuels tax or petroleum environmental assurance fee was paid for the fuel sold by ██████████ to ██████████. This fuel was admittedly received, stored, possessed and sold by ██████████ in this state.

Under KRS 138.224,

It shall be presumed that all untaxed motor fuels are subject to the tax levied under KRS 138.220 unless the contrary is established pursuant to KRS 138.210 to 138.490 or administrative regulations promulgated thereunder by the department. The tax shall be paid by the licensed dealer to the department. The burden of proving that any motor fuel is not subject to tax shall be upon the dealer or any person who imports, causes to be imported, receives, uses, sells, stores, or possesses untaxed motor fuels but fails to comply with all statutory and regulatory restrictions applicable to the fuel shall be jointly and severally liable for payment of the tax due on the fuel. A person's liability shall not be extinguished until the tax due has been paid to the department.

Thus, based upon the foregoing statute, ██████████ is liable for the tax and fee in question and the burden of proving otherwise rested squarely upon ██████████. See also KRS 224.60-145(3) and (6). ██████████ has not and cannot meet this burden of proof here and accordingly is liable for the tax and fee.

Therefore, the outstanding special fuels tax and petroleum environmental assurance fee assessment totaling \$██████████ (plus applicable interest) is deemed to be a legitimate liability of ██████████ Co., Inc. due to the Commonwealth of Kentucky.

The 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 laws and facts at 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 before 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 himself or 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 forth for any hearing.

Sincerely,



E. Jeffrey Mosley  
Interim Executive Director  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED