



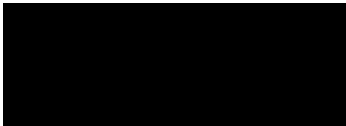
STEVEN L. BESHEAR
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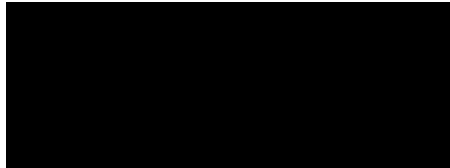
LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:



Contact:



FINAL RULING NO. 2014-42
November 25, 2013

Withholding tax assessments for the Months May, 2012 through July, 2013
Sales & Use Tax Assessments for the Months April 2012 through July 2013

FINAL RULING

The Kentucky Department of Revenue has outstanding tax assessments against [REDACTED], Inc. These consist of withholding tax assessments for the months May 2012 through July 2013, and sales and use tax assessments for the months April, 2012 through July 2013. Due to the failure of [REDACTED] to pay the assessed tax, the company's vice president [REDACTED] was assessed for the unpaid amounts. The following schedule reflects the total underpayment, applicable interest accrued to date, and all assessed fees and penalties for each period.

Withholding Tax

Period	Tax	Interest as of 11/25/14	Fees	Penalty	Total Per Period
5/2012-7/2013	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Sales and Use Tax

Period	Tax	Interest as of 11/25/14	Penalty & Fees	Credit	Total Per Period
4/2012-7/2013	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	(\$ [REDACTED])	\$ [REDACTED]

Total

Tax	Interest as of 11/25/14	Penalty & Fees	Credit	Total Per Period
\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	(\$ [REDACTED])	\$ [REDACTED]

For the assessment periods in issue and for the due dates of the relevant returns, [REDACTED] was Vice President of [REDACTED] Inc.

KRS 141.390(2) provides that “[t]he president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any corporation . . . shall be personally and individually liable, both jointly and severally, for any” unpaid withholding tax. KRS 141.390(2) goes on to note that “[n]o person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that taxes imposed by this chapter become or became due.”

KRS 139.185(1) provides that “the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person.” It further states that, “The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due.” KRS 139.185(1) also provides that “[n]o person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due..”

[REDACTED] signed the withholding tax returns for the months in issue, except July and December 2012. [REDACTED] sent in the July 2012 return unpaid and unsigned. No December 2012 withholding tax return was ever filed, and an assessment was made on the basis of W-2s filed for the year. All of the sales and use tax returns connected to the assessments were filed, but as they were filed electronically, there was no signature. [REDACTED] has not argued that he had no authority to collect, truthfully account for, or pay over the withholding tax for the months assessed. Instead, he argues that he proposed an expense reduction plan before he left the company, and that there should have been enough money for those who continued to run the company to pay the past due withholding tax.

██████████ argument is not supported by Kentucky law. He was vice president of ██████████ Inc. at the time the withholding tax returns for May 2012 to July 2013 became due and at the time the sales and use tax returns for the periods ending 4/30/2012 through 7/31/2013 became due. He is therefore liable for the unpaid withholding tax for that period.¹

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,

DEPARTMENT OF REVENUE



Stephen Crawford
Assistant General Counsel

¹ ██████████ was initially assessed for the unpaid withholding tax for November 2013. However, as he was not an officer of ██████████ Inc. when the November 2013 withholding tax return became due, that assessment was withdrawn.