



ERNIE FLETCHER
GOVERNOR

FINANCE AND ADMINISTRATION CABINET
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

████████████████████, INC.

Contact: ██████████, Accountant
████████████████████, Inc.

FINAL RULING NO. 2004-07
March 31, 2004

Sales and Use tax assessments for tax periods
January 1, 1999 through December 31, 2002

FINAL RULING

The Department of Revenue's audit of ██████████, Inc. ("██████████") for the taxable periods January 1, 1999 through December 31, 2002 identified sales and use tax underpayments attributable to unallowable deductions from gross receipts and purchases of consumable supplies and capital assets. ██████████ paid the Department's use tax assessments for consumable supplies and capital assets, but protested the portion of the assessment for unallowable deductions from gross receipts. As of the date of this final ruling, \$██████████ remains due, including accrued interest of \$██████████ and Cost of Collection Fees in the amount of \$██████████. Cost of Collection Fees were assessed in accordance with KRS 131.440(1)(b), because the tax was assessed after the amnesty period for taxable periods ending or transactions occurring prior to December 1, 2001.

At issue is whether ██████████ has complied 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.

On ██████████, 2003, ██████████ submitted check number ██████████ in the amount of \$ ██████████ in payment of the use tax assessments for consumable supplies and capital assets. Upon the check stub was a handwritten note which states: "We are protesting the unallowable deductions but, we are paying the Capital Assets and untaxed supplies with interest + fee." The Department sent ██████████ a letter on ██████████, 2003 acknowledging receipt of the check for the unprotested portions of the assessment and granted the company a two-week extension of time in which to submit a supporting statement explaining why the Department should reconsider its position with respect to the unallowable deductions. Having received no supporting statement or a response to its letter dated ██████████, 2003, the Department issued a second letter advising ██████████ that it must submit a supporting statement by ██████████, 2003 or the Department would have no alternative but to issue a final ruling. To date, the Department has not received ██████████'s supporting statement, or any other communication from the taxpayer.

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."

The Department has granted ██████████ two extensions of time in which to file a supporting statement. However, ██████████ has failed to respond or submit any documentation that would allow the Department some basis for reconsideration of its assessments. Accordingly, ██████████ has failed to properly protest the Department's sales tax assessments for unallowable deductions. This is the final ruling of the Kentucky Revenue Cabinet, and its successor agency, the Finance and Administration Cabinet.

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.

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

Sincerely,
FINANCE AND ADMINISTRATION CABINET



GEORGE D. RENFRO
Assistant Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED