



ERNIE FLETCHER
GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
www.kentucky.gov

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2005-09
April 7, 2005

Sales and Use tax assessments for tax periods
April 1, 2002 through June 30, 2003

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments against [REDACTED] for the taxable periods April 1, 2002 through June 30, 2003. The following table provides a breakdown of the amount of tax due, all assessed fees and penalties, as well as the accrued interest as of the date of this final ruling

Period	Tax	Interest as of 01/20/05	Penalty	Fee	Total per Period
04/01/02- 12/31/02	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/03- 06/30/03	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue are the following:

1. Whether gross receipts derived from sales of tangible personal property are subject to the sales tax imposed by KRS 139.200;
2. Whether consignment sales are subject to sales and use tax; and

3. Whether certain transactions were out-of-state sales not subject to sales and use tax.

The Division of Protest Resolution granted [REDACTED] extensions in letters dated [REDACTED], 2004, [REDACTED], 2004, and [REDACTED], 2004 to provide documentation to support its protest. However, [REDACTED] has failed to respond or submit any documentation that would allow the Department a basis for reconsideration of the tax liabilities. [REDACTED] has accordingly failed to remit a supporting statement as required by KRS 131.110(1).

KRS 131.110(1) 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 (KRS 131.110(1)) 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 so. The same is true in this matter.

Therefore, the outstanding sales and use tax assessments totaling \$ [REDACTED] (plus applicable interest, penalties and fees) are deemed legitimate liabilities of [REDACTED] due the Commonwealth of Kentucky. This 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.

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





