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ROBBIE RUDOLPH  
SECRETARY

In the matter of:

[REDACTED]

Contact: [REDACTED], CPA

[REDACTED]

FINAL RULING NO. 2005-57  
November 9, 2005

Sales and use tax assessments  
for the periods January 1, 1996 through December 31, 2002

**FINAL RULING**

The Kentucky Department of Revenue has issued sales and use tax assessments to [REDACTED] [REDACTED] ("Taxpayer") totaling \$ [REDACTED], plus interest, penalties and Amnesty fees for the periods January 1, 1996 through December 31, 2002. The following schedule reflects the total underpayment for each period.

Period	Tax	Interest as of 9/20/2005	Penalty	Amnesty Fee	Total per Period
1/1/96-12/31/96	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/99-12/31/99	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/00-12/31/00	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/01-12/31/01	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/02-12/31/02	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<b>Totals</b>	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Taxpayer lives in [REDACTED], Kentucky and is in the business of repairing motor boats. The Taxpayer conducts his business at his home residence. His customers are located in the Northern Kentucky area. He was not registered to report Kentucky Sales and Use Tax, but was charging his customers sales tax on repair parts.

The Taxpayer's records were incomplete for years 1996 through 1999. Therefore, the auditor prepared estimates of gross sales and deductions using the Taxpayer's Federal Individual Income tax returns and purchase invoices, where available. The auditor explained the calculation of the estimates in detail in the audit narrative.

At issue is the Taxpayer's claim that the estimates do not accurately reflect the Taxpayer's sales tax situation. In the protest letter dated [REDACTED], 2004, the Taxpayer's representative, [REDACTED] CPA, protested four items in the audit. These items are detailed as follows:

- 1) For tax year 1996, the Taxpayer protested the adjustments to add estimated gross receipts and deduct estimated tax paid purchases. He also protested the \$ [REDACTED] "classified as purchases," which he claims are not taxable purchases of materials, but costs associated with a boat he pieced together from scrap parts and sold.
- 2) For tax years 1997 and 1998, the Taxpayer protested the adjustments to add estimated gross receipts and deduct estimated tax paid purchases, claiming that he was not in business during these years and that he had indicated this by not filing Schedule C for self-employment income with his Individual Income Tax returns.
- 3) For tax year 1999, the Taxpayer protested the adjustments to add estimated gross receipts and deduct estimated tax paid purchases, stating that he was not in business during 1999, but rather that he was an independent contractor (mechanic) for an outside marine shop and received a 1099-MISC reporting \$ [REDACTED] in income.
- 4) The Taxpayer stated that he opened a marine repair shop at his premises in the year 2000, but protested the adjustments made to the 2000, 2001 and 2002 periods to add estimated gross receipts and deduct estimated tax paid purchases, stating that he was unable to determine how the Department determined the sales tax figures for these periods. The Taxpayer did not provide information to verify actual sales tax figures for these years.

For the reasons that follow, the above-referenced assessments are a legitimate tax liability of the Taxpayer to the Commonwealth of Kentucky. The Department's position on each of the four items protested is detailed as follows:

- 1) In a letter dated [REDACTED], 2005, the Department explained that the \$ [REDACTED] referred to in the Taxpayer's protest for tax year 1996 did not represent a taxable purchase of materials, but was the amount used to estimate the taxable receipts and corresponding tax paid purchase deduction associated with those receipts. The estimate calculation was explained in the audit narrative and work papers, copies of which were mailed to the Taxpayer with the Department's [REDACTED], 2004 assessment letter.

The estimated assessments for all tax periods included in the audit were made in accordance with KRS 131.180(4), which states, in pertinent part, that:

“If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession...”

- 2) The Department agreed to remove the estimated receipts from tax years 1997 and 1998 based on the information submitted in the protest letter. Liabilities for these years were adjusted to zero.
- 3) The Department agreed to remove the estimated receipts from tax year 1999 associated with the Form 1099-MISC for \$ [REDACTED], and adjusted the liability accordingly.
- 4) No adjustments were made to tax years 2000 through 2002. The Taxpayer did not provide any information to substantiate his claim that the Department’s estimated assessments were inaccurate. Therefore, no adjustments were made. This is in accordance with KRS 131.110(1), which states, in pertinent part, that:

“...The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made...”

It should be noted that the Department sent letters to [REDACTED], CPA dated [REDACTED], 2005, [REDACTED], 2005, [REDACTED], 2005 and [REDACTED], 2005, informing him of the Department’s findings and also of the Taxpayer’s right to request a conference or final ruling. [REDACTED] did not reply until his letter dated [REDACTED], 2005, which explained that he had been on vacation from [REDACTED], 2005 through [REDACTED], 2005. He requested another fourteen (14) days to respond. The Department’s letter to [REDACTED] dated [REDACTED], 2005 granted his request for extension until [REDACTED], 2005, and stated that if no response was received by that date, the Department would begin administrative proceedings for the issuance of a final ruling. As of the date of this document, no response has been received.

It is the Department’s position that since the Taxpayer has been contacted on five (5) occasions by letter, he has had ample opportunity to submit further documentation to substantiate his claim that the estimated adjustments are inaccurate, or to request a conference or final ruling. However, no such documentation or request has been received. 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 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



THOMAS H. BROWN  
Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

