ERNIE FLETCHER
GOVERNOR

OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
(502) 564-6785 FAX

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[redacted], INC. DBA [redacted]

Contact: [redacted], Inc.
DBA [redacted]

Final Ruling No. 2006-09
March 13, 2006

Sales and Use tax assessment
Periods January 1, 2001 through September 30, 2004

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments against [redacted], Inc. for the periods January 1, 2001 through September 30, 2004. The following schedule reflects the total underpayment, including applicable interest accrued to date and the applicable fee for each period.

Period	Tax	Interest as of 02/13/06	Penalty	Fee	Total per Period
01/01/01 – 11/30/01	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
12/01/01 – 12/31/01	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
01/01/02 – 12/31/02	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
01/01/03 – 12/31/03	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
01/01/04 – 09/30/04	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
Totals	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]

For the periods listed above, [redacted] Inc. had unsubstantiated deductions from room revenues that were subject to sales tax by $[redacted] and during the same period, failed to accrue use tax on purchases totaling $[redacted] subject to use tax. Additionally, the taxpayer had unreported taxable receipts totaling $[redacted] for the periods January 1, 2004 through September 30, 2004 due to failure to file monthly sales and use tax returns. In a letter received [redacted], 2005, [redacted], Inc. protested the audit assessment and requested additional time to review the audit. No other information was provided with this letter.

By letter dated [redacted], 2005, the Department granted [redacted], Inc. an extension to submit material or information that would constitute the supporting statement required by KRS 131.110(1). By letter dated [redacted], 2005, the Department notified [redacted], Inc. of its intent to initiate administrative action. However, [redacted], Inc. has failed to respond or submit any documentation that would allow the Department a basis for reconsideration of the sales and use tax underpayments identified above.

The Department of Revenue has issued repeated requests to [redacted], Inc. for information and documents that would permit the Department to evaluate the general protest contained in the initial letter. [redacted], Inc. has accordingly failed to remit a supporting statement as required by KRS 131.110(1).

At issue is whether [redacted], Inc. 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.

The Kentucky courts have held that this statutory provision 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. 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], Inc. 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