



FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY

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Governor

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John R. Farris
Secretary

In the matter of:

[REDACTED] OF THE CITY OF [REDACTED]

Contact: [REDACTED] of the City of [REDACTED]

Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2006-113
December 14, 2006

Sales and Use tax assessments for the periods
July 1, 2002 through March 31, 2006

FINAL RULING

The Kentucky Department of Revenue, (the "Department"), has outstanding sales tax assessments against the [REDACTED] of the City of [REDACTED] (the "[REDACTED]"), for the tax periods beginning July 1, 2002 through March 31, 2006. The following schedule reflects the total underpayment, applicable interest accrued to date, and all assessed fees and penalties for each period.

Period	Tax	Interest as of 12-14-2006	Amnesty Fees	Penalty	Total Per Period
07/01/2002-12/31/2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2003-12/30/2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2004-12/31/2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2005-12/31/2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2006-03/31/2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The ██████████ is a supplier of utility services to the city of ██████████, Kentucky and surrounding areas in ██████████ County. It is a municipally owned non-profit entity that supplies electricity, water, sewer service, natural gas and trash collection to residential and commercial customers.

For the tax periods at issue, the ██████████ had unreported taxable receipts totaling \$██████████. The excluded taxable receipts represent: (1) amounts received by the ██████████ from sales of utility services to commercial customers, mistakenly classified as sales to Kentucky residents, and (2) amounts received by the ██████████ attributable to increased rates to cover the cost of the utility gross receipts license tax (the "school tax") imposed by KRS 160.613. See KRS 160.613(1); 160.617.

The receipts from sales of utility services to certain commercial customers were mistakenly classified as receipts from Kentucky residential customers, and excluded by the ██████████ as exempt transactions pursuant to KRS 139.470(8)(a). The ██████████ did not protest the Department's adjustment disallowing these excluded receipts.

However, the ██████████ did protest the adjustment made by the Department disallowing excluded receipts by the ██████████ for the school tax, and requested a final ruling in a letter received by the Department on ██████████, 2006. At issue is whether the Department properly assessed sales tax on the portion of the ██████████'s gross receipts derived from retail sales to its commercial customers representing the ██████████'s cost for the school tax. In its protest, the ██████████ argued, "[i]t is difficult to understand, and in turn to explain to an inquiring Board of Commissioners, why we must pay a tax assessed on a tax we are ordered to collect."

KRS 139.200 imposes a sales tax upon all retailers at the rate of six percent (6%) of the gross receipts derived from retail sales. See KRS 139.200(1). This includes gross receipts derived from the furnishing of sewer services and natural gas, both of which are services provided by the ██████████. See KRS 139.200(2)(b); 139.100(2)(b) (for years prior to 2004); and 139.200(2)(g) (effective June 1, 2005).

KRS 160.613(1) imposes the school tax on the gross receipts derived from the furnishing of utility services, such as those provided by the ██████████. The tax is levied upon the utility service provider, although KRS 160.617 allows a utility service provider required to pay the school tax to "increase its rates in any school district in which it is required to pay the school tax by the amount of the school tax imposed[.]" The Supreme Court of Kentucky held in Lockett v. Electric and Water Plant Board, 558 S.W. 2d 611 (Ky. 1977), that the school tax:

...is levied upon the utility company, not its customers, and the utility company is the taxpayer ultimately liable for the tax. . . . The fact that KRS 160.617 permits the utility

company to raise its rates to alleviate the burden on the utility company does not convert the tax into one levied upon the customers in which the utility company merely acts as a collection agent. Therefore, the 3% rate increase is no different from the remainder of the utility bill which constitutes gross receipts to the utility company.

See Lockett, 558 S.W. 2d at 613.

Accordingly, the portion of the ██████████'s gross receipts attributable to its cost for the school tax levied under KRS 160.613 must be included in the ██████████'s gross receipts subject to Kentucky's sales tax. Thus, the outstanding sales tax assessments totaling \$██████████ (plus applicable interest) are legitimate liabilities of the ██████████ 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

