



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:

██████████, INC.

Contact: ██████████

FINAL RULING NO. 2006-40
April 27, 2006

Sales and Use tax assessment
Periods January 1, 2001 through December 31, 2003

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments against ██████████, Inc. for the periods January 1, 2001 through December 31, 2003. The following schedule reflects the total underpayment, including applicable interest accrued to date and the applicable penalty for each period.

Period	Tax	Interest as of 04/28/2006	Penalty	Total per Period
01/01/2001 – 12/31/2001	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2002 – 12/31/2002	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2003 – 12/31/2003	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Totals	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

██████████ was in the business of manufacturing and selling trade show display booths.

By letter dated ██████████, 2005, ██████████ filed a protest of the assessment stating that only the cost of the materials used to construct the displays was subject to tax. The Department of Revenue responded by letter dated ██████████, 2005 denying the protest.

It is the Department of Revenue's position that fabrication labor is subject to tax and that the sale price includes the cost of the materials as well as the cost of the labor. Section 1 of 103 KAR 28:030 states the application rule as follows:

Tax applies to charges for producing, fabricating, processing, printing, or imprinting tangible personal property for consumers who furnish either directly or indirectly, the materials used.

Section 2 of this regulation further states:

"Producing," "fabricating," and "processing" include any labor which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.

The sales and use tax statute KRS 139.130 further states:

(1) "Sales price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

* * * * *

(b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses;

Based upon the foregoing, and after considering the information presented by ██████████ in its protest and supporting statement, the sales and use tax assessments totaling \$██████████ (plus applicable interest and penalty) are hereby determined by the Department of Revenue to be correct and legitimate liabilities 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

