



**FINANCE AND ADMINISTRATION CABINET  
OFFICE OF THE SECRETARY**

**Ernie Fletcher**  
Governor

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**John R. Farris**  
Secretary

In the matter of:

██████████, LLC

Contact: ██████████ LLC

Attn: ██████████  
██████████

FINAL RULING NO. 2006-69  
September 6, 2006

Sales and use tax assessments  
for the period May 1, 2004 through December 31, 2004

**FINAL RULING**

The Kentucky Department of Revenue has issued sales and use tax assessments to ██████████, LLC totaling \$██████████, plus interest and penalties for the period May 1, 2004 through December 31, 2004. The following schedule reflects the total underpayment for this period.

Period	Tax	Interest as of 9/5/2006	Penalties	Total per Period
5/1/04-12/31/04	\$██████████	\$██████████	\$██████████	\$██████████
<b>TOTAL</b>	\$██████████	\$██████████	\$██████████	\$██████████

██████████, LLC is a manufacturer of ██████████ products with one location in Kentucky and another in ██████████. In May of 2004, the taxpayer converted from an S Corporation to an LLC; however, the nature and ownership of the business itself did not change. A sales and use tax audit was also performed on ██████████, Inc. for the period January 1, 2001 to April 30, 2004.

The items at issue are 1) the protest letter's failure to clearly indicate whether the protest was being filed for ██████████, LLC, ██████████, Inc., or both; 2) items described in the protest letter only as items which "...should actually qualify for sales tax exemption due to the nature of the items and the manner in which they are used for production of food products"; 3) request for waiver of penalties and interest; and 4) the taxpayer's failure to respond to the Department's requests for additional information.

For the reasons that follow, the above-referenced assessments are a legitimate tax liability of ██████████, LLC to the Commonwealth of Kentucky.

Item 1:

The protest letter dated ██████████, 2005 from the taxpayer's CPA ██████████ ██████████ referenced notice numbers for the tax notices issued to ██████████, Inc.; however, the taxpayer's name referenced on the letter was "██████████, LLC."

In a ██████████, 2005 letter, the Department requested clarification by ██████████, 2006 on which taxpayer the protest letter was intended for—██████████, LLC, ██████████, Inc., or both. On ██████████, 2006, a representative from ██████████ & Co. called and stated that the protest was intended for both taxpayers.

Item 2:

The taxpayer's protest letter stated that, "The above taxpayer believes items included under the sales tax audit should actually qualify for sales tax exemption due to the nature of the items and the manner in which they are used for production of ██████████ products."

In response, by letter dated ██████████, 2005, the Department requested a supporting statement listing each of the items under protest as well as documentation to substantiate ██████████'s position on each item in accordance with KRS 131.110(1), which states in part that, "...The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made." The Department requested this information by ██████████, 2006, but did not receive a response.

On ██████████, 2006, ██████████ called and left a message with the protest officer, inquiring about the status of the protest. The protest officer returned the call on ██████████, 2006. During the phone call, ██████████ stated that he had never received the Department's ██████████, 2005 letter. The protest officer faxed a copy of the letter and a copy of the reasonable cause guidelines to ██████████ on ██████████, 2006. In addition, a letter dated ██████████, 2006 was sent to ██████████, reiterating that a copy of the Department's ██████████, 2005 as well as a copy of the reasonable cause guidelines had been faxed to him on ██████████, 2006. The ██████████, 2006 letter requested a response by ██████████, 2006. No response has been received.

Item 3:

The protest letter stated that the taxpayer would agree to pay the tax due in full if the Department would waive the interest and penalties charged. In response, the Department's ██████████ 2005 letter stated that interest may not be waived, but that penalties may be waived if the taxpayer could demonstrate reasonable cause. The Department's letter included a copy of the reasonable cause guidelines as per KRS 131.010(9) and requested a response by ██████████ 2006. The Department did not receive a response, even after the follow up described under Item 2.

Based upon the foregoing, the Department has determined that the sales and use tax audit assessment totaling \$ ██████████ (plus applicable interest and penalties) is deemed a legitimate liability of ██████████, LLC 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.

██████████, LLC  
September 6, 2006 – Final Ruling No. 2006-69

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

