

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

Issue 1:

When the protest was filed by ██████████ Company, supporting documentation was not supplied verifying that two pieces of equipment were sold to a ██████████ company. By letter dated ██████████ 2005, the Department notified ██████████ Company of its intent to initiate administrative action. However, ██████████ Company 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 has issued repeated requests to ██████████ Company for information and documents that would permit the Department to evaluate the protest submitted.

103 KAR 30:190, Section 2(6) states:

To established that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state under the terms of an agreement with the purchaser, the seller will be required to retain in his records documentary evidence which satisfies the cabinet that there was such an agreement and a bona fide delivery outside this state of the property which was sold.

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.

It is the Department’s position that documentation was not presented after many requests and therefore the above transactions are properly subject to tax pursuant to KRS 139.200 and 139.310

Issue 2:

██████████ Company stated that the equipment was sold for the repair bill and that the repair facility was holding the equipment for resale. Documentation was not provided for verification that the mining equipment was sold for resale.

KRS 139.260(1) states in part:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and KRS 139.310, it shall be presumed that all gross receipts and all tangible personal property sold by any person for delivery in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;

KRS 139.270(1)(a) states in part:

The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property:

- (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate;

It is the Department's position that documentation was not presented after many requests and therefore the above transaction is properly subject to tax pursuant to KRS 139.200 and 139.310.

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



















