



FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY

Ernie Fletcher
Governor

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John R. Farris
Secretary

In the matter of:

[REDACTED] INC.

Contact:

[REDACTED]

FINAL RULING NO. 2006-99
October 10, 2006

Use Tax Refund Denied
Periods January 1, 1995 through August 31, 2002

FINAL RULING

The Kentucky Department of Revenue has denied refund requests in the amount of \$ [REDACTED] plus applicable interest as depicted in the chart below.

Tax Period	Tax Paid	Interest Paid	Interest payable As of 10/20/2006	Total
01/01/1995 – 12/31/1995	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/1996 – 12/31/1996	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/1997 – 12/31/1997	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/1998 – 12/31/1998	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/1999 – 12/31/1999	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2000 – 12/31/2000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2001 – 12/31/2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2002 – 08/31/2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED], Inc. ([REDACTED]) is a general contractor with contract jobs throughout the eastern United States. [REDACTED] specializes in the construction and development of both industrial and commercial sites as well as educational facilities. Approximately [REDACTED]% of [REDACTED]'s business is conducted outside the state of [REDACTED].

A sales and use tax audit of the period at instance resulted in an assessment of \$██████████ tax plus interest, an amnesty assessment fee mandated by KRS 131.440 and the applicable penalty levied under KRS 131.180. ██████ failed to pay the assessment or file a protest within the mandated forty-five day protest period. Consequently, the assessment went into collection status and came under the control of the Division of Collections. At that point, ██████'s only avenue for relief was to pay the assessment and request a refund on any tax and associated interest and penalty it asserted was overpaid. ██████ remitted the liability and requested a refund of \$██████████ plus associated interest, fees and penalty. That portion of the refund which was agreed to by the Department has been previously refunded.

At issue is whether tax paid to another state on materials and supplies purchased for use and subsequently delivered directly to Kentucky should be credited against Kentucky use tax levied under KRS 139.310. Secondary to this issue is whether the Department properly denied the use tax refund claim filed subsequent to the remittance of the assessment based upon ██████'s assertion of a credit pursuant to KRS 139.510 against its use tax liability for sales taxes paid to other states.

██████████ argues that they are entitled to credit against use tax due Kentucky for sales taxes paid in error to another state. It argues specifically that KRS 139.510 does not state that in order to be granted reciprocity; the tax must be legally or properly paid to another state.

KRS 139.310 states:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased on and after July 1, 1990, for storage, use, or other consumption in this state at the rate of six percent of the sales price of the property.

KRS 139.510 states:

The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or other consumption of tangible personal property in this state upon which a tax substantially identical to the tax levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been paid in another state. Proof of payment of such tax shall be according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.

It is the Department's position that sales made by out-of-state retailers to ██████ and delivered into Kentucky were sales made in interstate commerce and as such, sales tax was not due the retailer's state of residence. Any sales taxes paid by ██████ to those retailers were not legally owed to the states of those retailers and were therefore paid in error. Accordingly, ██████ is not entitled to credit under KRS 139.510 for those sales taxes paid in error.

Based upon the foregoing, the information provided by ██████ via its protest and supporting statement, the Department has determined that the use tax refund of \$ ██████ was properly denied by 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.

[REDACTED], Inc.
October 10, 2006-Final Ruling No. 2006-99

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

