



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], Inc.

Attn: [REDACTED]
[REDACTED]

FINAL RULING NO. 2007-05
March 23, 2007

Use Tax assessment
for the period
July 1, 2001 through December 31, 2003

FINAL RULING

The Kentucky Department of Revenue has outstanding use tax assessments against [REDACTED], Inc for the period July 1, 2001 through December 31, 2003. The following schedule reflects the total underpayment, including applicable interest, fee and penalty.

Period	Tax	Interest as of 03/23/2007	Amnesty Fee	Penalties	Total per Period
07/01/2001 - 09/30/2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
10/01/2001 - 12/31/2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2002 - 12/31/2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/2003 - 12/31/2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED], Inc. ([REDACTED]) is an [REDACTED]-based construction contractor. [REDACTED]'s primary activity is road construction and it engages in road construction projects in various states.

██████████, Inc.

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During the audit period, ██████████ was also engaged in miscellaneous airport improvement projects in Kentucky.

In September 2005, ██████████ was issued an assessment of \$██████████ for the audit period. By letter dated ██████████, 2005, ██████████ formally protested a portion of the assessment and remitted a payment of \$██████████ for the non-contested portion. The entire remittance was applied to tax.

At issue is whether use tax was properly assessed on construction equipment brought into the state of Kentucky for use on construction projects.

It is ██████████'s position that the tax it paid to the state of Illinois on construction equipment the company brought into the state of Kentucky for use on construction projects should be subject to the reciprocal arrangements as set forth in KRS 139.510.

Revenue holds the position that reciprocity does not apply to the specific use tax assessed on construction equipment brought into this state for use on construction jobs. KRS 139.510 provides for reciprocity for use tax liabilities incurred under the provisions of KRS 139.310. However, the tax assessments in question relate to construction machinery and equipment brought into this state that are assessed separately and distinctly under KRS 139.320. The pertinent part is cited below:

The use tax of six percent (6%) is hereby levied upon the storage, use, or other consumption in this state of any machines, machinery, tools, or other equipment brought, imported or caused to be brought into this state for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage, or dredging system, electric or steam railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structures, or any part thereof. The owner or, if the property is leased the lessee of any such machine, machinery, tools, or other equipment shall be liable for the tax provided for in this chapter, to be computed as set out below. The useful life of such machines, tools, or other equipment shall be determined by the department in accordance with the depreciable value permitted under KRS Chapter 141 and regulations issued pursuant thereto. Said use tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this state bears to the total useful life. Such tax shall become due immediately upon such property's being brought into this state, and in the absence of satisfactory evidence as to the period of use intended in this state, it shall be presumed that such property will remain in this state for the remainder of its useful life.

In addition, Kentucky Regulation 103 KAR 25:110 provides further information regarding the formula for determining the taxable amount of construction machinery and equipment subject to the KRS 139.320 tax. Section 5 of the regulation states, "Nothing in this

regulation shall be so construed as to relieve any taxpayer of liability for sales or use tax levied on purchases of tangible personal property for use, storage or consumption in this state under other provisions of the sales and use tax law. This language clearly indicates that the use tax imposed under KRS 139.320 is separate and distinct from the sales tax imposed under KRS 139.200 or the use tax imposed under KRS 139.310.

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

██████████, Inc.

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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



DONALD S. GUIER
Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

