



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

**Ernie Fletcher**  
Governor

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**John R. Farris**  
Secretary

In the matter of:

██████████, INC.

Contact:

████████████████████  
████████████████████  
████████████████████

FINAL RULING NO. 2007-16  
May 25, 2007

Sales tax assessments  
for the periods July 1, 1997 through December 31, 2000

**FINAL RULING**

The Kentucky Department of Revenue has issued sales tax assessments to ██████████, Inc. totaling \$██████████, plus interest, for the audit period July 1, 1997 through December 31, 2000. The following schedule reflects the total underpayment, and applicable interest accrued to date for each period.

Period	Tax Due	Interest As of 05-25-2007	Fees	Total Due As of 05-25-2007
07/01/1997 12/31/1997	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/1998 12/31/1998	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/1999 11/30/1999	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2000 12/31/2000	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
<b>Total</b>	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

For the reasons that follow, these assessments are legitimate tax liabilities of ██████████, Inc. to the Commonwealth of Kentucky.

██████████ Inc. (██████████) was incorporated in ██████████ in 1978. On ██████████, 1999, the former owner of the corporation sold all of the stock to the present owner. The corporation did not cease operation or liquidate its business. The sales and use tax number was cancelled ██████████, 2001, ██████████'s primary business was in ██████████ sales, supplying ██████████ or ██████████ trailers for fairs, festivals, and other events to local organizations in the Northern Kentucky area, but with no business location in Kentucky.

At issue:

Whether the Department of Revenue properly assessed tax regarding gross receipts and denied deductions claimed for the period July 1, 1997 through December 31, 2000.

██████████ contends that its business supplied beverages to events where volunteer organizations would resell the products, making ██████████ nothing more than a wholesaler with the use of equipment complementary to the sale of the ██████████, etc. for the ██████████. Additionally, ██████████ contends that it would be put to extraordinary expense by providing further documentation when the very nature of the transactions, as indicated in the work papers, was purchases made by religious or other tax-exempt organizations.

Under by KRS 139.200, as it existed during audit period, those who made “sales at retail” or “retail” sales were subject to a tax of 6 percent on gross receipts.

Further, KRS 139.260 states:

For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a “retail sale” or “sale at retail” 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 or 139.410;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.490; or
- (3) Purchased according to regulations of the [Department of Revenue] governing a direct pay authorization.

By letter dated ██████████, 2001, ██████████ protested the entire audit assessment. The Department by letter dated ██████████, 2001 requested documentation to support the protest. ██████████ submitted a letter dated ██████████, 2001 along with copies of resale certificates acceptable to justify adjustment to the work papers.

On ██████████, 2006, ██████████, 2006, ██████████, 2006, and ██████████, 2006, the Department of Revenue submitted letters to ██████████'s attorney requesting additional documentation. No response was received from ██████████. After a telephone conversation with ██████████ on ██████████, 2006, the Department sent, per ██████████'s request, copies of all documentation and letters since the initial protest. As of this date, ██████████ has failed to provide any additional information in support of its protest. Therefore, ██████████ has not met its burden of proof under KRS 139.260.

Based on the foregoing, the information supplied with the protest and supporting statements, the sales tax assessment and applicable interest are deemed legitimate liabilities 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

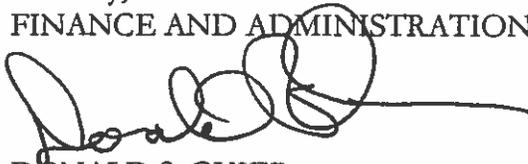
██████████, Inc.

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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

A handwritten signature in black ink, appearing to read "Donald S. Guier", with a long horizontal line extending to the right.

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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

