STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted] GROUP LP

Contact: [redacted]

FINAL RULING NO. 2009-23
May 5, 2009

Sales and Use Tax Assessment
January 1, 2001 through December 31, 2004

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [redacted] Group LP ("[redacted]") for the audit period January 1, 2001 through December 31, 2004. The following schedule reflects the total liability for this case.

Period	Tax	Interest as of 5/4/2009	Total per period
01/01/2001-12/31/2001	$[redacted]	$[redacted]	$[redacted]
01/01/2002-12/31/2002	$[redacted]	$[redacted]	$[redacted]
01/01/2003-12/31/2003	$[redacted]	$[redacted]	$[redacted]
01/01/2004-12/31/2004	$[redacted]	$[redacted]	$[redacted]
Totals	$[redacted]	$[redacted]	$[redacted]

During the periods under audit, [redacted] was engaged in the development, design, manufacture and sale of a wide variety of medical devices and supplies. An audit conducted by the Multistate Tax Commission on those periods revealed an additional tax liability. [redacted] timely protested and provided sufficient documentation to remove a large portion of the original assessment.

At issue is whether has complied with the requirements of KRS 131.110(1) and provided adequate documentation supporting its protest of the use tax on promotional materials.

The DOR has issued repeated requests for to submit the supporting documentation that would enable the DOR to determine whether the remaining items or transactions for which tax was assessed were indeed taxable. Letters dated 2008, , 2008, , 2008 and , 2009 were sent to requesting documentation. Additionally, voice mail messages were left on at least two different occasions.

The DOR's position is that has failed to comply with the requirements of KRS 131.110(1) which states in pertinent part:

> The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

The courts have held that this statutory provision (KRS 131.110(1)) 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, 698 S.W.2d 528, 530 KY. App. (1985). In order to make a valid protest, a taxpayer must provide "financial statements, records or some other documentation that would allow the Department of Revenue some basis for reconsideration."

provided a schedule reflecting what it claims to be liable, but has not provided the documentation necessary to support its claim. Therefore, the outstanding sales and use tax assessment totaling $ (plus applicable interest) is deemed the legitimate liability of Group LP due to 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's office of the Kentucky Board of Tax Appeals, 1268 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 petition of appeal must:

(1) Be filed in quintuplicate;
(2) Contain a brief statement of the law and facts at 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.

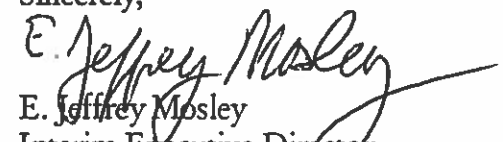
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR1:010, 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 himself, 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,



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED