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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] INC.

Contact: [REDACTED], Sales Tax Supervisor

FINAL RULING NO. 2009-24
May 18, 2009

Sales and Use Tax Assessment
September 1, 2001 through August 31, 2005

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [REDACTED] Inc. ("[REDACTED]") for the audit period September 1, 2001 through August 31, 2005. The following schedule reflects the total liability for this case:

Period	Tax	Interest as of 5/15/2009	Fees	Total per period
09/01/01-11/30/01	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
12/01/01-12/31/01	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/02-12/31/02	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/03-12/31/03	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/04-12/31/04	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/05-08/31/05	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the above periods, [REDACTED] was a consumer electronics retailer offering a wide array of electronic items including [REDACTED], [REDACTED], and [REDACTED], as well as [REDACTED] and [REDACTED], [REDACTED] and accessories, [REDACTED] devices, [REDACTED]

and ██████████. An audit conducted by the Multistate Tax Commission (MTC) for these periods arrived at the additional tax liabilities set forth above.

At issue is whether ██████████ had sufficiently documented its bad debt deductions allowed under the provisions of 103 KAR 31:040 Section 2 and KRS 139.350 Sections 1 and 5.

During the course of the audit, a discrepancy between the bad debts reported on various reports and the amount reported on the sales and use tax returns was revealed. ██████████ failed to provide an explanation for the difference between what was reported as a deduction (exempt sales and bad debt for the sample month's report) versus what was shown on the return for the same sample month. The difference in these amounts was divided by the total exempt sales for each month and billed as additional taxable receipts for each audit period.

██████████'s position is that the difference in the bad debt reports and the figures shown as bad debts on the sales and use tax returns reviewed by the MTC auditor was actually the difference created by tax-exempt sales. ██████████ provided reports to the MTC auditor for all tax exempt sales for their Kentucky stores; however, it did not have a report available that established all of the tax-exempt sales from out-of-state sales to explain the discrepancy.

Section 2 of 103 KAR 31:040 states:

In the case of a taxpayer reporting on the accrual basis of accounting, a retailer may deduct as a bad debt, the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter collected in whole or in part, the retailer shall report and pay the tax on the amount so collected on the first return filed after the collection is made.

KRS 139.350 Section 1 states:

A retailer may deduct as a bad debt the amount found to be worthless and charged off for income tax purposes provided the retailer is reporting and remitting the tax on the accrual basis. The retailer may take the deduction on the return for the period during which the bad debt is written off as uncollectible in the retailer's books and records and is eligible to be charged off for income tax purposes. For purposes of this section, "charged off for income tax purposes" includes the charging off of unpaid balances due on accounts determined to be uncollectible, or declaring as uncollectible the unpaid balance due on accounts if a retailer is not required to file federal income tax returns.

KRS 139.350 Section 5 states:

If any bad debt accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the return filed for the period in which the collection is made and the amount of the tax due shall be paid with the return.

It is DOR's position that ██████████ has failed to provide the information necessary to verify the amounts it took as bad debt deductions on its sales and use returns for the periods in question.

██████████ has not provided the additional documentation needed to allow for a review and evaluation of the differences between the bad debts detail and the bad debt as reported on the sales tax returns. Therefore, the outstanding sales and use tax assessment totaling \$██████████ (plus applicable interest and the Amnesty Assessment Fee assessed under KRS 131.440) is deemed to be the legitimate liability of ██████████ Inc. 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 the 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 appellants 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.

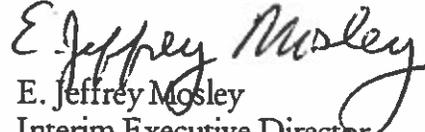
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and

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 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

