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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

[REDACTED] INC

Contact: [REDACTED] Inc.
Attn: [REDACTED], CPA
[REDACTED]

FINAL RULING NO. 2009-37
October 28, 2009

Sales and Use Tax Assessment
November 1, 2002 through October 31, 2006

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [REDACTED] Inc. ([REDACTED]) for the audit period November 1, 2002 through October 31, 2006. The following schedule reflects the total liability for this case.

Period	Net Tax	Interest as of 10/27/09	Total due per period
11/01/02-12/31/02	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/03-12/31/03	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/04-12/31/04	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/05-12/31/05	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/06-10/31/06	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the periods in question, [REDACTED] sold [REDACTED] goods to nursing homes and home health agencies.

[REDACTED] submitted a letter dated [REDACTED], 2008 protesting the assessment. This letter asserted that its bulk sales of [REDACTED] to nursing homes and other health care facilities were not subject to tax as having been for resale. It also asserted that the sales were exempt under KRS 139.472 because a [REDACTED] was required for [REDACTED]'s sale of the [REDACTED] to the facilities, where the [REDACTED] were then dispensed by a registered [REDACTED]. The letter closed with the contention that "the explanations contained in this letter are adequate

to execute a reduction in the assessment once proper documentation is provided.” It promised “[t]his additional documentation will be provided in a separate mailing by ██████████, 2008.”

The DOR has repeatedly requested ██████████ to submit 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, ██████████, 2009 and ██████████, 2009 were sent to ██████████ requesting supporting documentation. Additionally, on ██████████, 2009 an extension of time until ██████████, 2009 was granted for the supporting documentation to be submitted. Also, an e-mail was sent to ██████████’s representative on ██████████, 2009 requesting an update on this case. ██████████ has not responded to this request for an update.

At issue is whether ██████████ has complied 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. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the DOR 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 for a protest to be valid, a taxpayer must “provide financial statements, records or some other documentation that would allow the Department of Revenue some basis for reconsideration.”

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in a taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S. W 2d 234 (1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide appropriate documentation in support of their denials of tax liability, despite being given ample opportunity to do so. The same is true in this matter.

██████████ has not submitted the documentation necessary to support its contentions and thereby failed to comply with KRS 131.110. ██████████ has not supplied the resale certificates promised in its ██████████, 2008 letter nor has it provided documentation to support its other contentions, which in any event appear to be legally flawed and perhaps unsupportable factually as well. This may very well explain why no documentation has been forthcoming.

For the reasons stated above, the outstanding sales and use tax assessment totaling \$ ██████████ (plus applicable interest) 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 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.

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

