



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], INC.
[REDACTED], INC.

Contact: [REDACTED] & Co. [REDACTED] Inc.
[REDACTED] [REDACTED]

FINAL RULING NO. 2010-06
January 29, 2010

Sales and Use Tax assessment for the period
January 1, 1997 through December 31, 2005

FINAL RULING

The Kentucky Department of Revenue has an outstanding tax assessment against [REDACTED], Inc., now known as [REDACTED], Inc., ("[REDACTED]") for the period January 1, 1997 through December 31, 2005. The following schedule reflects the amounts due for the various years making up the audit period :

| Year | Tax | Interest as of 01/29/2010 | Amnesty Fees | Penalties | Total Due as of 01/29/2010 |
|--------------------|---------------|---------------------------|---------------|---------------|----------------------------|
| 01/01/97- 12/31/97 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| 01/01/98- 12/31/98 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| 01/01/99- 12/31/99 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| 01/01/00- 12/31/00 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| 01/01/01- 11/30/01 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |
| 12/01/01- 12/31/01 | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |

| | | | | | |
|--------------------|---------------|---------------|---------------|---------------|---------------|
| 01/01/02- 12/31/02 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| 01/01/03- 12/31/03 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| 01/01/04- 12/31/04 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| 01/01/05- 12/31/05 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| TOTAL | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |

██████████ is a Kentucky corporation with its principal office in ██████████, Kentucky. It purchases ██████████ and ██████████ from suppliers and then sells that ██████████ and ██████████ to various Kentucky customers. The ██████████ and ██████████ is loaded on ██████████'s trucks and delivered to the customers' locations.

██████████ asserts that it is not a retailer liable for sales tax on its sales of ██████████ and ██████████ to its Kentucky customers, claiming that it instead only rendered the service of delivering the ██████████ and ██████████. However, ██████████'s own records (e.g., bills, invoices), showed that it was the purchaser of the ██████████ and ██████████ in question, which it subsequently sold to its customers.

Under these facts, ██████████ made retail sales of ██████████ and ██████████ in Kentucky and was a retailer subject to Kentucky sales tax. See KRS 139.100; 139.110; 139.120; 139.200 (law in effect during audit period). As its records reflect, ██████████ purchased the ██████████ and ██████████ in question and subsequently sold that ██████████ and ██████████ to its Kentucky customers. ██████████ was therefore liable for the sales tax on the gross receipts realized from its sales to those customers. KRS 139.200.

The fact that ██████████ may not mark up the ██████████ and ██████████ sold to its customers does not change the nature of the transaction as a sale of tangible personal property because there is a transfer of title and possession of tangible personal property for a consideration. See KRS 139.120. Even though ██████████'s invoice price of the ██████████ and ██████████ to its customers may also include delivery and spreading costs or charges, these components of the invoice price are not separately stated and thus properly part of the gross receipts subject to tax. See 103 KAR 30:070 § 4. The regulation just cited governed transactions prior to July 1, 2004. Effective July 1, 2004, KRS 139.050 was amended to include all delivery charges, regardless of whether those charges are separately stated or itemized. 2003 Ky. Acts, ch. 124, § 1.

Based upon the foregoing, and after considering the information presented by ██████████, Inc. in the protest and supporting statement and at the conference held pursuant to KRS 131.110, the tax assessment totaling \$ ██████████ (plus applicable interest, fees, and penalties) is hereby determined by the Department of Revenue to be correct and a legitimate liability due the Commonwealth of Kentucky.

This letter constitutes 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:

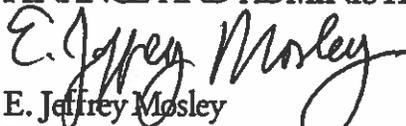
1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

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,
FINANCE AND ADMINISTRATION CABINET

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED