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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] INC

Contact: [REDACTED]

FINAL RULING NO. 2010-59
September 10, 2010

Sales and Use Tax
September 1, 2004 through May 31, 2008

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [REDACTED] Inc. ("[REDACTED]") for the audit period [REDACTED], 2004 through [REDACTED], 2008. The following schedule reflects the total liability for this case.

Period	Net Tax	Interest as of 9/10/10	Penalty	Total due per period
09/01/04-12/31/04	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/05-12/31/05	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/06-12/31/06	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/07-12/31/07	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/08-05/31/08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the periods in question, [REDACTED] was engaged in the distribution of gasoline and oil.

During the course of the initial field audit, ██████ failed to comply with the auditor's request for the necessary records to conduct the audit. Consequently, an estimated assessment was issued pursuant to the provisions of KRS 131.180(4). The taxpayer protested the estimated assessment, stating that its business had closed and its owner had health problems, but the taxpayer was now interested in rescheduling the audit. The audit was reassigned to the ██████ Taxpayer Service Center where the taxpayer again failed to meet with the auditor and present the information necessary to complete the audit. The reassigned audit was finalized and turned in for processing. ██████ continued to protest. However, the only documentation provided was the Federal Depreciation Schedule which did not contain enough information to change the estimated assessments to actual assessments. The DOR asked for the taxpayer to set up a conference where they could present all of the information they had available or a final ruling would be issued. The taxpayer failed to respond to this letter.

The DOR issued repeated requests for ██████ to submit supporting documentation that would enable the DOR to determine whether the estimated assessments should remain on the audit but no response was made by the taxpayer. Letters dated ██████, 2009 and ██████, 2009 were sent to ██████ requesting supporting documentation. Nothing was received in response.

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 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 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."

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 (Ky. App. 1985). 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.

Therefore, the outstanding sales and use tax assessment totaling \$██████████ (plus applicable penalty and interest) is a 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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and

4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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

Cc: [REDACTED] CPA