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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] INC

Contact: [REDACTED] Inc.

FINAL RULING NO. 2011-34
April 21, 2011

Sales and Use Tax Assessment
October 1, 2004 through September 30, 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 October 1, 2004 through September 30, 2008. The following schedule reflects the total outstanding liability.

Period	Tax	Interest as of 04/21/2011	Total per Period
10/1/04-06/30/05	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
07/1/05-06/30/06	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
07/1/06-06/30/07	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
07/1/07-06/30/08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
07/1/08-09/30/08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] provides service and sales of propane gas, heating related parts and equipment and has one location in [REDACTED], Kentucky.

At issue is ██████'s sale of propane gas without charging sales tax. Under KRS 139.210(4), sales tax is a debt of the retailer to the Commonwealth. ██████ claims its practice is to ask the customer if the propane is for residential or business use and if for residential use, sales tax would not be charged. However, ██████ did not keep documentation that would demonstrate which of its sales were for residential use.

The exemption for propane gas is provided by KRS 139.470(8)(a), which states as follows:

Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue.

It is the position of DOR that transactions for sales of propane that do not have the names and addresses of the purchasers and no documentation that the sales are for "residential use" are taxable sales. The invoices held taxable were marked as cash sales with no proof that these sales were for residential use in accordance with the provisions of KRS 139.260. The burden of proof is on ██████ to provide documentation that these sales were in fact to individuals for residential use.

Based upon the foregoing, and the information supplied as part of or in connection with ██████'s protest and supporting statement, the Department of Revenue has determined that the sales and use tax audit assessment totaling \$██████████ (plus applicable interest) is a legitimate liability due the Commonwealth of Kentucky. The foregoing schedule includes \$██████████ in tax, plus applicable interest that ██████ does not contest.

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.

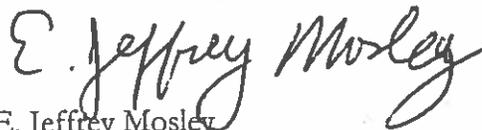
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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