STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[redacted] LP

Contact: [redacted]

FINAL RULING NO. 2012-17
March 28, 2012

Sales and Use Tax assessment
Periods January 1, 2005 through December 31, 2006

FINAL RULING

The Kentucky Department of Revenue ("DOR") has outstanding sales and use tax assessments against [redacted] LP ("[redacted]") for the periods January 1, 2005 through December 31, 2006. The following schedule reflects the total underpayment, including applicable interest accrued to date.

Period	Tax	Interest as of 3/28/12	Total per period
01/01/05-12/31/05	$[redacted]	$[redacted]	$[redacted]
01/01/06-12/31/06	$[redacted]	$[redacted]	$[redacted]
Totals	$[redacted]	$[redacted]	$[redacted]

For the periods listed above, [redacted] sold metal building products to contractors and wholesalers.

[redacted] failed to charge tax on freight and the fuel surcharge. Also, [redacted] mistakenly charged [redacted] tax instead of Kentucky tax on a few invoices where the delivery address was noted as Kentucky. [redacted] also purchased consumable supplies without paying the sales tax.

[redacted] protested and contended that prior to June 2007 it was sourcing sales to Kentucky based upon incorrect tax codes. It contends that the assessment is based on sales incorrectly identified as Kentucky sales notwithstanding our review of customer invoices with Kentucky addresses. [redacted] also requested a credit for tax it contends was paid to Kentucky in error for sales made and shipped to customers in [redacted].

At issue is whether [redacted] has provided sufficient documentation as required by KRS 131.110(1) for review that would allow DOR to adjust the liability or allow credit for tax claimed as paid in error.

With the original supporting statement, [redacted] submitted a spreadsheet without backup documentation containing the totals it deemed correct. Additional information necessary for review prior to making any adjustments was requested in letters to [redacted] dated [redacted], 2010; [redacted] 2011; [redacted], 2011; and. [redacted], 2011. [redacted] neither provided any documentation nor responded in any manner.

The Kentucky courts have held that KRS 131.110 imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

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

Therefore, the outstanding sales and use tax assessments totaling $[redacted] (plus applicable interest) are deemed legitimate liabilities of [redacted] LP due 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]
Attn: [redacted]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED