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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████, CPA
██████████ PSC
██

FINAL RULING NO. 2012-23
March 28, 2012

Sales and Use Tax Assessment
for the period May 1, 2006 through December 31, 2007

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against ██████████ LLC ("██████████") for the period May 1, 2006 through December 31, 2007. The following schedule reflects the amount of outstanding tax, penalties and interest accrued to date after adjustments by DOR:

Period	Tax	Interest as of 3/28/2012	Penalties	Totals
5/1/06-12/31/06	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
1/1/07-12/31/07	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
TOTALS	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

During the audit period, ██████████ operated restaurants and rented restaurant space and equipment.

[REDACTED] did not supply adequate records for examination during the audit. As a result, DOR estimated the assessment for additional receipts and purchases of consumable supplies and capital items based on the records made available. [REDACTED] protested the assessment and requested that the audit be performed again, stating that records would be provided. However, [REDACTED] again failed to provide adequate records during the second audit. [REDACTED] protested the results of the second audit and provided some documentation allowing DOR to reduce the assessment.

At issue is whether [REDACTED] has complied with the supporting statement requirement of KRS 131.110(1).

After adjusting the audit liability based on the supporting documentation provided, the Department requested that [REDACTED] supply further documentation or pay the liability in full. [REDACTED] s accountant, [REDACTED], CPA, stated during a telephone conversation on [REDACTED], 2012 that there are no further records to support [REDACTED] s position.

The Department's position is that with respect to the assessment that remains outstanding and is reflected in the schedule above, [REDACTED] has failed to comply with 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.

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 Department 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 Revenue Department some basis for reconsideration." Id. at 529.

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 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, 779 S.W.2d 234 (Ky.App. 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 so. The same is true in this matter.

Penalties have been assessed pursuant to KRS 131.180(2) because of [REDACTED] s failure to timely pay at least 75% of the tax determined to be due by the DOR. [REDACTED] has not shown that the penalties were erroneously applied and it has failed to demonstrate that the failures triggering the penalties' imposition were due to reasonable cause.

For the reasons stated above, the outstanding tax liability of \$ ██████████ (plus applicable penalties and interest) is a legitimate liability of ██████████ LLC 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.

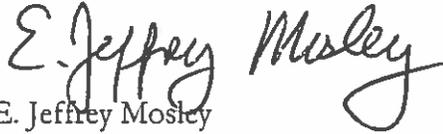
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

