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Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] LLC

Contact: [REDACTED], LLC
Attn: [REDACTED], Office Manager

FINAL RULING NO. 2012-44
June 27, 2012

Sales and Use Tax assessments
for the periods
June 1, 2006 through April 30, 2010

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessments totaling \$ [REDACTED] against [REDACTED] LLC (" [REDACTED] ") for the audit period June 1, 2006 through April 30, 2010. The following schedule reflects the amount of outstanding tax and applicable interest accrued to date:

Period	Tax	Interest as of 6/27/2012	Total
6/1/06 - 12/31/06	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/07 - 12/31/07	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/08 - 12/31/08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/09 - 12/31/09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
1/1/10 - 04/30/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] is a retailer of industrial products used by manufacturers.

At issue are unallowable deductions from gross receipts for retail sales. ██████████ took deductions on its sales and use tax returns for the audit period for sales for which it did not have valid exemption or resale certificates and the DOR has accordingly disallowed those deductions. Also included in the outstanding liability assessments totaling \$██████████ are items that ██████████ has not contested or offered any substantiation that would satisfy the supporting statement requirement of KRS 131.110.

██████████ has provided some copies of its customers' Kentucky sales and use tax permits and resale certificates in support of its protest. In many cases, this information was not obtained at the time of the sale or within ninety (90) days of the sale and lacked the detail necessary for the certificates to be considered valid and taken in good faith. Despite DOR's requests by letters dated ██████████, ██████████, ██████████, and ██████████, 2012, ██████████ has failed to provide the documentation necessary to adjust or reduce the outstanding assessments. Because of the insufficiency and incompleteness of some of this exemption documentation, the burden of proving the validity of these exemption claims remains with ██████████.

There is a presumption that all sales of tangible personal property sold in this state are subject to tax unless the retailer accepts an exemption or resale certificate in good faith and maintains the appropriate documentation as outlined in the statutory provisions below:

KRS 139.260 states:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property and digital property sold by any person for delivery or access in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Department of Revenue governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS 139.777.

KRS 139.270 states in part:

(1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property or digital property:

- (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
- (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption

* * * * *

(3)(a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:

- 1. Accepts, within ninety (90) days subsequent to the date of sale, a properly completed resale certificate or certificate of exemption; and
- 2. Maintains a file of such certificate in accordance with KRS 139.720.

(b) If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.

It is DOR's position that ██████████ did not have properly completed exemption or resale certificates on file for the deductions in question as required under KRS 139.270. Consequently, the burden of proof regarding the validity of the exemptions claimed remains with ██████████. Without further detail regarding the exemption claims, it is not evident that the items sold were used by customers in a manner that qualify them for the exemption under KRS 139.470(11)(a)2 either as raw materials, supplies, or industrial tools. Without additional proof to the contrary, the receipts from these remaining transactions are taxable in accordance with KRS 139.260.

Based upon the foregoing, and the information supplied with the protest and supporting statement, the DOR has determined that the sales tax assessments totaling \$ ██████████ (plus

applicable interest) are legitimate liabilities of [REDACTED] 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.

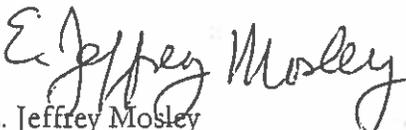
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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

cc: [REDACTED], CPA
[REDACTED]

