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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[Redacted], Inc

Contact:

[Redacted]

FINAL RULING NO. 2014-19
May 15, 2014

Sale and Use Tax Assessment
for the Audit Period
February 3, 2010 through February 28, 2013

FINAL RULING

The Kentucky Department of Revenue ("the DOR") has an outstanding sales and use tax assessment against [Redacted] Inc ("[Redacted]") following an audit for the period February 3, 2010 through February 28, 2013 ("the audit period"). The following schedule depicts the tax liability represented by this assessment:

Period	Tax	Interest as of 5/15/14	Fees	Penalties	Total
02/03/10-12/31/10	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
01/01/11-09/30/11	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
10/01/11-12/31/11	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
01/01/12-12/31/12	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
01/01/13-02/28/13	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]
Total	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]	\$ [Redacted]

[Redacted] is an [Redacted] contractor that performs or performs contracts in Kentucky consisting of the installation or repair of automatic doors. On occasion, it makes retail sales of parts i.e., without installation.

At issue is whether ██████████ was properly assessed 1) sales and use tax for or on its purchases of materials to perform contracts in Kentucky and 2) sales tax for its sales of repair parts in Kentucky.

It is undisputed that ██████████ is and was a contractor governed by the Kentucky administrative regulation, 103 KAR 26:070. As such, it was liable for sales and use tax on or for its purchases of materials used to perform or fulfill its contracts in Kentucky during the audit period. 103 KAR 26:070 § 1.

It is also undisputed that ██████████ made retail sales of repair parts for automatic doors in Kentucky during the audit period. That is, these items were sold by themselves to ██████████'s customers and were not installed by ██████████ or otherwise used by ██████████ in the performance of a contract. ██████████ was therefore liable for sales tax on these transactions. See, e.g., KRS 139.200 and 139.210; 103 KAR 26:070 § 5.

Furthermore, it is undisputed that ██████████ was not registered in Kentucky to collect or remit sales and use tax during the audit period and consequently filed no sales and use tax returns during this period. Accordingly, it did not pay or remit sales and use tax on or for its purchases of materials used in performing its Kentucky contracts nor did it collect and remit sales tax on the items of tangible personal property it sold in Kentucky. ██████████ was therefore properly issued the assessment reflected in the schedule above.

This assessment is presumed to be correct, with the burden of proving otherwise resting squarely upon the taxpayer, or in this case, ██████████ Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955); KRS 139.260. ██████████ has offered no proof that would meet its burden of proof. The information it has provided does not refute the findings of the Department's assessment. Essentially, it has provided a small sample of customer invoices that reflect only a combined labor and service charge and do not provide any breakdown that would show the purchase price or cost of the materials. See 103 KAR 26:070 § 1. Thus, the Department has been provided with nothing that would show or indicate whether the assessment at issue, or the portion of that assessment attributable to ██████████'s performance of contracts in Kentucky, is incorrect. And ██████████ has not provided anything that would even suggest there could be any error in the portion of the assessment consisting of sales tax attributable to ██████████'s retail sales of repair parts.

██████████ has been assessed amnesty fees pursuant to the Kentucky Tax Amnesty Act, KRS 131.400 to 445. Pursuant to KRS 131.440(1)(b)1.b., taxes assessed and collected after the amnesty period (i.e., October 1 through November 30, 2012) for taxable periods ending or transactions occurring prior to October 1, 2011, shall be charged a cost of collection fee of 25% at the time of the assessment. As the above schedule shows, the taxes to which these fees apply were assessed for periods ending or transactions occurring prior to October 1, 2011.

Penalties have also been assessed pursuant to KRS 131.180(2) because of ██████████'s failure to timely pay at least 75% of the tax determined to be due by the DOR during the months constituting the audit period. ██████████ has provided nothing that would indicate the penalties were erroneously applied or assessed or that the amnesty fees and penalties should be waived or abated.

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, fees, and penalties) are legitimate liabilities 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.

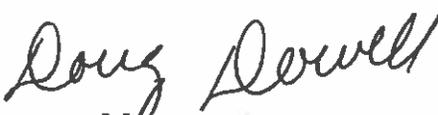
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity

- must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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


Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

