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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████

FINAL RULING NO. 2014-21
May 15, 2014

Sales and Use Tax Refund Denial
for the period January 1, 2009 through December 31, 2011

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied ██████████ LLC's ("██████████") refund claims for the period January 1, 2009 through December 31, 2011. The schedule below reflects the denied refund claims and the applicable interest projected through May 15, 2014:

Period	Tax	Interest as of 5/15/2014	Totals
2009	██████████	██████████	██████████
2010	██████████	██████████	██████████
2011	██████████	██████████	██████████
TOTALS	██████████	██████████	██████████

██████████ operates haunted attractions in Kentucky. Specifically, during 2009 and 2010, ██████████ operated a walk-through haunted house in ██████████, Kentucky. In 2011, ██████████ operated haunted trails at ██████████, Kentucky.

██████████ paid actors to haunt its attractions with a highly choreographed structure. The patrons of the haunted trails in 2011 were able to navigate the trails freely. However, the actors would try to scare the patrons along the way, and direct the patrons which way to go if they were going the wrong way.

██████████ collected sales tax from its customers during all the years in question as part of the ticket price. ██████████ has not provided any credit card receipts or documentation indicating who its customers were for these sales, and ██████████ has acknowledged that many of the sales were cash only.

██████████ subsequently requested a refund of the sales tax it had collected on ticket sales for the haunted attractions in 2009-2011 on the basis that the haunted attraction entry fees constituted payment for participation in an event as opposed to a taxable sale of admissions. In support of its position, ██████████ asserts that customers participate by engaging with the actors dispersed throughout the attraction, paying attention, and making choices at various points on how to traverse the attraction.

At issue is whether the haunted attraction entry fees should be included in gross receipts as admissions subject to sales tax under KRS Section 139.200(2)(c). 103 KAR 28:010, Section 1 defines “admissions” as “the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment event or amusement.” 103 KAR 28:010, Section 2 provides that “[t]he gross receipts from the sale of admissions shall be subject to tax unless the fees are paid for the privilege of using the facilities or participating in the event or activity.”

Regardless of the fact that ██████████'s customers walk through the haunted attractions, the customers are ultimately purchasing their tickets to be thrilled, frightened, entertained and amused. As such, ██████████'s entry fees fit squarely within the definition for taxable admissions in 103 KAR 28:010, Section 1. Moreover, these customers do not become participants in the haunting activities merely by choosing how they walk through the attraction. Many of the taxable admissions listed in 103 KAR 28:010, Section 4 involve such choices. Consequently, the ticket sales by ██████████ are taxable admissions.

Finally, even if haunted attraction entry fees collected by ██████████ were nontaxable participation fees, KRS 139.770(3) provides that a retailer cannot be entitled to a refund unless the money can be refunded to the purchasers who bore the burden of the tax. *See also Shannon v. Hughes & Co.*, 109 S.W.2d 1174, 1175 (Ky. 1937). Many of the customers in this case paid cash and are unidentifiable, and ██████████ has not provided any documentation on who the credit card purchasers were for the years in question. As such, the conditions in KRS 139.770(3) would also prevent ██████████ from obtaining a refund.

For the reasons stated above, ██████████'s refund claims for the periods January 2009 through December 2011 totaling \$██████████ plus applicable interest, were properly denied.

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

cc:

[REDACTED]

CPAs, PLLC

[REDACTED]





