In the matter of:

[Redacted] LLC

Contact: [Redacted] FINAL RULING NO. 2014-34
October 15, 2014

Sales and Use Tax Assessment
October 1, 2007 through December 31, 2012

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [Redacted] LLC ("[Redacted]") for the audit period October 1, 2007 through December 31, 2012. The following schedule reflects the total liability for this case with interest computed through October 15, 2014:

<table>
<thead>
<tr>
<th>Period</th>
<th>Net Tax Due</th>
<th>Interest</th>
<th>Penalty</th>
<th>Fees</th>
<th>Total due per period</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/08-12/31/08</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>01/01/09-12/31/09</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>01/01/10-12/31/10</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>01/01/11-09/30/11</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>10/01/11-12/31/11</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>01/01/12-12/31/12</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
<td>$[Redacted]</td>
</tr>
</tbody>
</table>

During the audit period, [Redacted] was a family owned and operated electrical contracting company.
As a result of a sales and use tax audit, DOR issued [xxx] an assessment in the amount of [xxx] in tax, plus applicable penalties, fees and interest. Prior to filing its protest, [xxx] remitted a payment of [xxx] which was applied to the total liabilities for the 2007 audit period. The schedule above reflects the sales and use tax liability that remains after the earlier payment on a portion of the assessment.

At issue is whether [xxx] complied with the supporting statement requirement of KRS 131.110(1) pertaining to its protest of the remaining tax assessment at issue.

By letters dated [xxx], 2014 and [xxx], 2014, DOR requested the supporting documentation substantiating [xxx]'s claim that these items in dispute were exempt as work completed on real property and a reclassification of material purchases to capitalized inventory in [xxx]'s general ledger. [xxx] has not submitted the supporting documentation requested and has failed to respond in any manner.

DOR contends that [xxx] has not complied with the supporting statement requirement of KRS 131.110 which states in relevant 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 of 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 Department some basis for reconsideration.”

The courts have held that this statutory provision 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 in question. Scotty’s Construction Co., Inc. v. Revenue Cabinet, 679 S.W.2d, 234, 235 (Ky. App 1989). In both Scotty’s Construction and Eagle Machine, the taxpayer failed to provide information that would satisfy the supporting statement requirement of KRS 131.110(1), with respect to the outstanding assessment, despite being given ample opportunity to do. The same is true here.

[xxx] 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 been assessed pursuant to KRS 131.180(2) because of [redacted]’s failure to have timely paid at least 75% of the tax determined to be due by the DOR for the periods reflected in the schedule above. [redacted] has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling $[redacted] (plus applicable penalty, fees and interest) is a legitimate liability of [redacted] LLC 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 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

[Signature]

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [Redacted] PSC

Attn: [Redacted] CPA