



STEVEN L. BESHEAR  
Governor

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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], INC

Contact: [REDACTED], Inc.

FINAL RULING NO. 2010-84  
December 3, 2010

Tangible Personal Property Tax Assessments  
January 1, 2004 through January 1, 2007

FINAL RULING

The Kentucky Department of Revenue currently has outstanding tangible personal property ad valorem tax assessments against [REDACTED], Inc. ("[REDACTED]") for the January 1, 2004 through January 1, 2007 tax years. These assessments total \$ [REDACTED] (plus applicable interest and penalties). A breakdown of the assessments is shown in the chart below:

Tax Year	Tax Due	Interest As of 12/03/2010	Penalty 12/03/2010	Total Due 12/03/2010
January 1, 2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2005	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2006	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<b>TOTALS</b>	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] is a retail motor vehicle dealer with operations in [REDACTED] County. [REDACTED], CPA, submitted a protest regarding the audit assessments issued by the Department. [REDACTED] and the Department agreed on some issues. The remaining items of disagreement are listed below.

The first protested issue is the classification of a security system as tangible property. The protest states that the security system was attached to the building and was not easily

removable. It was further stated that the system should be a leasehold improvement and not subject to tangible property tax. KRS 132.010(3) defines real property to include “all lands within this state and improvements thereon.” The Department lists security systems in the instructions to the tangible property tax return as Class III property and the security system was assessed as tangible personal property.

The next issue protested is that of supplies as Other Tangible Property. The auditor combined the deduction claimed for office supplies, other supplies, membership dues and publications and miscellaneous expenses on the income tax returns to estimate the amount of supplies on hand on January 1 of each year. The total was then divided by 12 months to represent a one-month supply. ██████████ states that if these accounts were analyzed, there would be postings of items to the accounts that are not tangible items. ██████████ did not submit information to substantiate the account postings.

██████████ protests the penalty and interest portions of the above assessments, stating that its tax returns and payments were submitted in a timely manner. Interest and penalty were assessed in accordance with KRS 132.290(3), which states:

All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is paid.

KRS 131.175 further states:

Notwithstanding any other provisions of KRS Chapters 131 to 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have authority to waive the penalty, but not interest, where it is shown to the satisfaction of the department that failure to file or pay timely is due to reasonable cause.

KRS 131.175 authorizes the Department to waive penalties where it is shown to the satisfaction of the Department that failure to file or pay timely is due to reasonable cause. KRS 131.010(9) defines reasonable cause as “an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation.” *See also* 103 KAR 1:040. ██████████ did not provide a reasonable cause to the Department.

██████████ did at one point request a conference to discuss its protest of the above assessments. The Department later wrote ██████████ a letter on ██████████, 2010 requesting additional information relative to its protest and asked it to advise the Department by ██████████, 2010 that a conference was still desired. ██████████ did not comply with this request nor has it responded to a second letter from the Department dated ██████████, 2010 again requesting that this same information be provided by ██████████, 2010.

Therefore, the outstanding tangible personal property tax assessments totaling \$ ██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████████, Inc. and are due to the Commonwealth of Kentucky.

This letter is the final ruling of the Kentucky 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

cc:

[REDACTED], CPA  
[REDACTED]