



STEVEN L. BESHEAR  
Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], LLC

Contact:

[REDACTED], LLC  
[REDACTED]

FINAL RULING NO. 2013-39  
June 26, 2013

Tangible Personal Property Ad Valorem Tax Assessment  
January 1, 2007 through January 1, 2009

FINAL RULING

[REDACTED], LLC (" [REDACTED] ") has been audited by the Department of Revenue ("the Department") for compliance with the property ad valorem tax laws for the tax years 2007 through 2009 with respect to its reporting of tangible personal property or lack thereof. Additional tax has been determined to be due and assessed in accordance with KRS 132.290, 132.360 and other applicable provisions of law. As a result, the Department has issued assessments to [REDACTED] totaling \$ [REDACTED], plus applicable interest and penalties. A breakdown of these assessments is shown in the chart below:

Tax Year	Tax Due	Interest As of 06-26-2013	Penalty As of 06-26-2013	Total Due As of 06-26-2013
January 1, 2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2009	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

██████████ is in the business of selling real estate and is located in ██████████ County. Its protest of the above assessments questions the Department's listing of tangible personal assets and their classifications.

In connection with the protest, ██████████ requested that the Department provide more details regarding the listing of the tangible personal assets and the reclassification of the equipment being taxed. This information was provided via e-mail on ██████████, 2012 to the CPA acting on its behalf. Another e-mail was sent by the Department on ██████████, 2012 to the CPA and followed by letters dated ██████████, 2013, ██████████, 2013 and ██████████, 2013, sent to ██████████ and the CPA, requesting ██████████ to provide documentation in support of its protest. Despite the Department's requests, the requested documentation has not been received.

In addition to the tax assessments, the Department has levied a 10 % penalty for 2007 and 2008 pursuant to KRS 132.290(3), which provides: "All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of the taxes. . . ." For these periods, ██████████ had omitted some assets and did not properly classify other assets. The Department also levied a 20 % penalty for 2009 pursuant to KRS 132.290(4), which provides: "All omitted property not voluntarily listed shall be subject to a penalty of twenty percent (20%) of the amount of the taxes. . . ." In this case, ██████████ did not file any property tax return listing its tangible personal assets for taxation.

At issue is whether ██████████ has complied with the requirements of KRS 131.110(1), which states in pertinent 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 or 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 Revenue Department some basis for reconsideration." Id. at 529.

The courts have further held that KRS 131.110(1) 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 or refund denial in question. Scotty's Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky.App., 1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. ██████████ has failed to provide any documentation to dispute the Department's assessments.

Therefore, based on the foregoing, the outstanding tangible personal property tax assessments totaling \$ ██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████████, 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. 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:



