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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ LLC

Contact: ██████████

FINAL RULING NO. 2013-45
July 26, 2013

Tangible Personal Property Ad Valorem Tax

FINAL RULING

The Kentucky Department of Revenue ("Department") currently has outstanding tangible personal property ad valorem tax assessments against ██████████ LLC ("Taxpayer") totaling \$██████████ (plus applicable interest and penalties) for the assessment dates of January 1, 2008, 2009, and 2010. A breakdown of the assessments is outlined in the chart below:

Tax Year	Notice Number	Tax Due	Interest Due 07/26/2013	Penalty Due 07/26/2013	Total Due 07/26/2013
2008	██████████	\$██████████	\$██████████	\$██████████	\$██████████
2009	██████████	\$██████████	\$██████████	\$██████████	\$██████████
2010	██████████	\$██████████	\$██████████	\$██████████	\$██████████
Totals		\$██████████	\$██████████	\$██████████	\$██████████

At issue is whether Taxpayer 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. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

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 so. The same is true in this matter.

The Department of Revenue received an undated letter from Taxpayer on ██████, 2013 requesting additional time to submit documentation supporting its protest of the assessments in question. On ██████, 2013, Taxpayer was contacted to determine if information was forthcoming in support of its protest. On ██████, 2013, Taxpayer requested and was granted an extension of time to ██████, 2013 to submit information necessary to consider protested issues. Another extension was requested and granted on ██████, 2013 allowing Taxpayer until ██████, 2013 to file the needed information. A request for information was made by the Department on ██████, 2013 with the understanding that it was a final request and that failure to respond will result in a final ruling. Taxpayer replied that day stating that the information would be provided in a week. Nothing has been received to date in the way of information that would allow the Department to consider the issue(s) in dispute; therefore the assessments are deemed valid and due 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



