



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] LLC

Contact: [REDACTED] LLC  
Attn: [REDACTED]  
[REDACTED]

FINAL RULING NO. 2013-47  
August 16, 2013

Tangible Personal Property Ad Valorem Tax Assessments relating to  
Assessment Dates of January 1, 2008 through January 1, 2011

### FINAL RULING

The Kentucky Department of Revenue currently has outstanding tangible personal property tax assessments against [REDACTED] LLC ("[REDACTED]") totaling \$[REDACTED] (plus applicable interest, penalties and fees) for the tax years represented by the assessment dates of January 1, 2008 through January 1, 2011. A breakdown of the assessments is shown in the chart below:

Tax Year	Tax Due	Payment Made on 11/29/2013	Interest as of 8/16/2013	Penalty as of 8/16/2013	Total Due as of 8/16/2013
January 1, 2008	\$ [REDACTED]		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2009	\$ [REDACTED]		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2010	\$ [REDACTED]	*(\$ [REDACTED])	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2011	\$ [REDACTED]		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<b>TOTALS</b>	\$ [REDACTED]	(\$ [REDACTED])	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

\*For amnesty calculation purposes, \$[REDACTED] of the \$[REDACTED] is presumed to be tax, and \$[REDACTED] is presumed to be interest.

██████████ is a retailer of items to the general public, as well as a provider of monogramming services. It maintains that its embroidery machine used for monogramming shirts, bags, hats, and other items it sells at retail to its customers should qualify for the favorable tax treatment afforded under KRS 132.020(1)(i) and KRS 132.200(4) for “machinery actually engaged in manufacturing.” ██████████ also asserts that its inventory of merchandise it sells to the public (the shirts, bags, hats, etc.) should be exempt from local taxation under KRS 132.200(4) as “raw materials actually on hand at the plant for the purpose of manufacturing.” ██████████ has the burden of proving that the exemptions it claims apply to the property in question. American Tobacco Co. v. City of Bowling Green, 191 Ky. 416, 205 S.W. 570 (1918).

The provisions in question do not provide an exemption from local taxation and a reduced state ad valorem tax rate for property owned and used by ██████████ at a retail facility and where no manufacturing is taking place. While it is the contention of ██████████ that the placing of a monogram on, for example, a shirt is manufacturing, the Department does not agree with this assertion. Instead, monogramming is merely an embellishment and thus would not qualify as manufacturing under such court decisions as Department of Revenue vs. Allied Drum 561 S.W.2d 323 (Ky. 1978), which states that “[a] process which involves a material having commercial value for its intended use, that merely upgrades the material so as to increase the value obviously would not be manufacturing.” *Id.* at 326 (emphasis added.) Therefore, ██████████’s embroidery machine does not qualify for the reduced state tax rate and exemption from local taxation sought by ██████████ as it is not “machinery actually engaged in manufacturing.” KRS 132.020(1); 132.200(4).

As noted above, ██████████ has reported its merchants inventory - - i.e., items it sells at retail to the public such as shirts, bags and hats - - as raw material exempt from local taxation under KRS 132.200(4). This exemption for “raw material actually on hand at the [manufacturing] plant for the purpose of manufacture” by its very terms does not extend to goods ██████████ held for sale at its retail locations.

A tax assessment is presumed to be valid and correct, with the burden resting upon ██████████ to prove otherwise. See, e.g., Revenue Cabinet v. Gillig, 957 S.W.2d 206, 209-10 (Ky. 1997); Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955). ██████████ has failed to provide persuasive evidence to overcome the presumption of the assessment’s validity and correctness and to carry its burden of proving that the assessment is invalid or incorrect.

Finally, penalties have been assessed pursuant to KRS 132.290 because ██████████ did not list its property or file its tangible personal property ad valorem tax returns in a timely manner. ██████████ has not offered anything that would show or suggest that these penalties were erroneously assessed or that it should be relieved of liability for these penalties.

Therefore, the outstanding tangible personal property tax assessments totaling \$ ██████████ (plus applicable interest, penalties and fees) are deemed legitimate liabilities of ██████████ LLC 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



