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Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] INC.

Contact: [REDACTED] Inc.

Attn: [REDACTED]

FINAL RULING NO. 2014-23  
May 28, 2014

Tangible Personal Property Ad Valorem Tax Assessments  
January 1, 2010 through January 1, 2012

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, 2010 through January 1, 2012 tax years. These assessments were omitted assessments issued pursuant to KRS 132.290 and related statutory provisions based upon [REDACTED]'s failure to list taxable tangible personal property as required by law. A breakdown of these assessments is shown in the chart below:

Tax Year	Tax Due	Interest As of 5/28/2014	Penalty As of 5/28/2014	Collection Fee As of 5/28/2014	Total Due As of 5/28/2014
January 1, 2010	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
January 1, 2011	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
January 1, 2012	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]
<b>TOTALS</b>	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]	[\$] [REDACTED]

In response to these assessments, ██████████'s representative has submitted a letter that states as follows: "In reviewing the audit findings, I have disputed some of the findings on the billing for Omitted Tangible Property Taxes. I am going through line item by item and working up the disputed items." To date, ██████████ has not provided any indication as to what it is protesting nor has it provided any documentation to support the protest.

The statute governing protest of tax assessments states:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. (KRS 131.110(1)).

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment a legal duty to provide the Department with a supporting statement that is "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). Thus, 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 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.

The same is true in this matter. The Department has requested on several different occasions that ██████████ submit documentation that would satisfy the supporting statement requirement of KRS 131.110(1). ██████████ has failed to do so and therefore has not met this prerequisite to a valid protest.

A penalty of ten percent (10%) was also assessed in accordance with KRS 132.290(3) because the omitted property in question was voluntarily listed. ██████████ has not provided any information or proof that would show that these penalties were erroneously assessed or applied or that they should be abated or waived for reasonable cause. KRS 131.175, 103 KAR 1:040.

A 25% cost of collection fees were also assessed pursuant to KRS 131.440(1)(b)1.b for the tax years occurring prior to October 1, 2011. ██████████ has not offered anything to show that these fees were erroneously assessed or that they should be abated or waived.

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

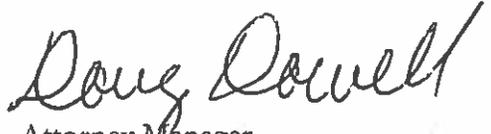
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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 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

  
Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

