GOVERNOR

DEPARTMENT OF REVENUE FINANCE AND ADMINISTRATION CABINET 200 FAIR OAKS LANE FRANKFORT, KENTUCKY 40620 www.kentucky.gov

, INC.

ROBBIE RUDOLPH SECRETARY

In the matter of:

Contact:

FINAL RULING NO. 2004-19 May 12, 2004

Sales and Use tax assessments for the periods July 1, 1997 through December 31, 2000

FINAL RULING

The Department of Revenue of the Finance and Administration Cabinet has outstanding sales and use tax assessments against **Example 1**, Inc. for the periods July 1, 1997 through December 31, 2000. The following schedule reflects the total underpayment, including applicable interest accrued to date and the penalty for each period.

Period	Tax	Interest as of 05/28/04	Penalty	Fee	Total per Period
CYE 12/97	\$	\$	\$	\$	\$
CYE 12/98	\$	\$	\$	\$	\$
CYE 12/99	Ş	\$	\$	\$	\$
CYE 12/00	\$	\$	\$	\$	\$
Totals	\$	\$	\$	\$	\$

For the periods listed above, underreported tax due the Commonwealth from additional receipts and the sale of certain assets that were subject to sales tax and for use tax due on the purchases of taxable capital assets and consumable supplies. The total assessment for this audit period after re-examination was **\$10000000**.

In a letter dated **1999**, 2002, **1999** denied that additional sales tax was owed. The portion of the assessment totaling **1999** relating to additional receipts from sales was successfully protested and subsequently removed. Nothing has been offered in support of its position on the remaining items. The Department of Revenue has issued repeated , Inc. May 12, 2004 – Final Ruling Page 2

requests that **explore** provide information and documents that would permit the Department to evaluate the general denial contained in the initial protest. **Explore** has not responded to any of these requests for information and has, therefore failed to remit a supporting statement as required by KRS 131.110(1).

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. Upon written request, the cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

In Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky.App., 698 S.W.2d 528 (1985), the Kentucky Court of Appeals held, inter alia, that ". . . in a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error."

In Scotty's Construction Company, Inc. v. Commonwealth Of Kentucky Revenue Cabinet, Ky.App., 779 S.W. 234 (1989), the Court mentions, ". . . the circuit court which held that Scotty's failure to submit documentation as required by the statute before the issuance of the final ruling had the effect of failure to preserve appellant's right to review the assessment and on the strength of <u>Eagle Machine</u> set aside the Board's order and reinstated the determination of Revenue." The Court of Appeals then reaffirms its opinion in <u>Eagle Machine</u> by stating: "In a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error." The Court concludes by stating, "... the statute is mandatory in nature."

The Department of Revenue has granted its requests for extensions and has repeatedly requested that provide documentation to support its protest. However, has failed to respond or submit any documentation that would allow the Department a basis for reconsideration of the sales and use tax underpayments identified above. By failing to submit a supporting statement, has failed to protest the sales and use tax assessments summarized above. This letter is the final ruling of the Revenue Cabinet, and its successor agency, the Finance and Administration Cabinet. , Inc. May 12, 2004 – Final Ruling Page 3

APPEAL

You may appeal this 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 ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

- 1. Be filed in quintuplicate;
- 2. Contain a brief statement of the law and facts in issue;
- 3. State the petitioner's position regarding the law, facts or both; and
- 4. Include a copy of this final ruling letter with each copy of the complaint or petition.

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 2 (3) of 802 KAR 1:010:

- 1. An individual may represent himself in hearings before the Board;
- 2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
- 3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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

Gey D. Kup

GEORGE D. RENFRO Assistant Director Division of Protest Resolution

CERTIFIED MAIL RETURN RECEIPT REQUESTED