



ERNIE FLETCHER  
GOVERNOR

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

ROBBIE RUDOLPH  
SECRETARY

In the matter of:

██████████ LLC

Contact: ██████████ CHA - CHO  
██████████ LLC  
██

Final Ruling No. 2004-25  
August 31, 2004

Sales and use tax assessments for the periods  
January 1, 2001 through November 30, 2001

**FINAL RULING**

The Department of Revenue of the Finance and Administration Cabinet has outstanding sales and use tax assessments against ██████████, LLC for the periods January 1, 2001 through November 30, 2001. The following schedule reflects the total underpayment, including applicable interest accrued to date and the penalty and applicable fee for each period.

Period	Tax	Interest as of 04/28/04	Penalty	Fee	Total per Period
01/01/01 – 11/30/01	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

For the period listed above, ██████████, LLC underreported receipts from equipment sales that are subject to sales tax by \$ ██████████. Also, ██████████, LLC underreported purchases subject to use tax by \$ ██████████. Amnesty fees were assessed in accordance with KRS 131.440(1)(b) because the assessments summarized above are for taxable periods that ended before December 1, 2001.

At issue are the following:

1. Whether gross receipts derived from sales of tangible personal property are subject to the sales tax imposed by KRS 139.200;
2. Whether certain purchases of tangible personal property are subject to sales tax pursuant to KRS 139.330.

Concerning the first issue, it is the taxpayer's position that since the company did not collect sales tax on the sales of the equipment, it cannot be held liable for tax it did not collect.

KRS 139.210 states:

- (1) The taxes herein imposed shall be collected by the retailer from the consumer.
- (2) Except as provided in subsection (3) of this section, the tax required to be collected by the retailer from the consumer shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.
- (3) The cabinet may relieve certain retailers from the provisions of subsection (2) of this section of separate display of the tax when the circumstances of the retailer make compliance impracticable.
- (4) The taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky.
- (5) The taxes to be collected under this section shall constitute a debt of the retailer to the Commonwealth.

KRS 139.200 states, as it existed during the audit period:

For the privilege of making "retail sales" or sales at retail", a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts of any retailer derived from "retail sales" or "sales at retail" made within this Commonwealth on and after July 1, 1990.

Based on KRS 139.200 and KRS 139.210, it is the Department's position that the taxpayer is responsible for collecting and remitting sales tax on its sales of tangible personal property.

Concerning the second issue, the Department of Revenue has issued repeated requests that ██████, LLC provide information and documents to support that use tax is not due on its purchases of consumable supplies. However, ██████, LLC 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.

Based on the above, the outstanding sales and use tax assessments totaling \$██████ (plus applicable interest and amnesty fees) are deemed legitimate liabilities of ██████ LLC due the Commonwealth of Kentucky. This is the final ruling of the Kentucky Department of Revenue, and its successor agency, the Finance and Administration Cabinet.

### **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.

██████, LLC

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You will be notified by the Clerk of the Board of the date and time set for any hearing

Sincerely,

FINANCE AND ADMINISTRATION CABINET

A handwritten signature in cursive script that reads "Thomas H. Brown".

THOMAS H. BROWN

Director

Division of Protest Resolution

CERTIFIED MAIL

RETURN RECEIPT REQUESTED