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ROBBIE RUDOLPH
SECRETARY

In the matter of:

██████████, INC.

Contact: ██████████ Tax Counsel
██████████ Company
████████████████████

Final Ruling No. 2005-55
November 9, 2005

Sales and use tax assessments
for the periods January 1, 2000 through December 31, 2002

FINAL RULING

The Kentucky Department of Revenue has issued sales and use tax assessments to ██████████, Inc. ("██████████") totaling \$██████████, plus interest, penalties and Amnesty fees for the periods January 1, 2000 through December 31, 2002. The following schedule reflects the total underpayment for each period.

Period	Tax	Interest as of 9/9/2005	Penalty	Amnesty Fee	Total per Period
1/1/00-12/31/00	\$██████████	\$██████████	\$██████████	\$██████████	\$██████████
1/1/01-11/30/01	\$██████████	\$██████████	\$██████████	\$██████████	\$██████████
12/1/01-12/31/01	\$██████████	\$██████████	\$██████████	\$██████████	\$██████████
1/1/02-12/31/02	\$██████████	\$██████████	\$██████████	\$██████████	\$██████████
Totals	\$██████████	\$██████████	\$██████████	\$██████████	\$██████████

██████████, Inc. provides monitoring service security systems distributed throughout the United States. ██████████ is a subsidiary of the ██████████ Corporation and was previously headquartered in ██████████. After the sale of ██████████'s coal mining operations, ██████████'s accounting section was moved to ██████████, where ██████████'s monitoring stations and other operations are located. ██████████ maintains a system of dealers (independent contractors), who purchase and install the security system equipment as required. There are no dealers

located directly in Kentucky. All of the Kentucky installations are made through dealers in ██████████ and ██████████. None of the equipment is sold to the consumer; it remains the property of ██████████'s.

At issue is the assessment of Kentucky use tax on ██████████'s purchase of customer accounts from dealers, which included the purchase of monitoring equipment, labor charges and other charges incidental to the installation of the equipment at the customer's location. The monitoring equipment became the property of ██████████'s. ██████████'s capitalized the amounts paid to the dealers, which were inclusive of all charges. As the contract between ██████████'s and the dealers did not specifically break down the labor, commissions and materials in the payment schedule, all amounts paid to the dealers for the customer package were deemed subject to Kentucky Use Tax per KRS 139.330, which states in part:

"Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the use tax levied under KRS 139.310..."

KRS 139.310 states:

"An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased on and after July 1, 1990, for storage, use, or other consumption in this state at the rate of six percent (6%) of the sales price of the property."

For the reasons that follow, the above-referenced assessments are a legitimate tax liability of ██████████'s to the Commonwealth of Kentucky.

It is ██████████'s position that the assessment of use tax on the entire amount that they capitalized from the purchase of the customer accounts is incorrect, as the customer accounts purchased were nontaxable intangible property. ██████████'s has stated that it is difficult to break out the capital and labor components of the transactions, as the dealers base the value of a system on the monthly revenue it will bring, and that the tangible property portion is minimal. ██████████'s stated that their accounting department does not break out the value of tangible versus intangible property on the dealer accounts, and that this is the industry standard. ██████████'s also stated that it is difficult to obtain information on the tangible property portion of the purchases, because that is handled by the dealers, who change frequently. ██████████'s provided a spreadsheet showing the direct costs they capitalized for security systems they installed during 2001; however, they advised that the information was not related to the customer accounts purchased from dealers that same year.

The Department requested copies of the actual contracts corresponding to the items under protest, as well as a breakdown of the capital items pertaining to equipment and labor and other items included in the contracts. This information was not submitted. In a letter dated ██████████, 2005, ██████████'s was advised that the Department's position had not changed, and that ██████████'s

had the right to request a conference to discuss the matter. ██████'s was informed that if no response was received by ██████, 2005, the process of issuing a final ruling would begin. No response was received to the Department's ██████, 2005 letter.

After a review of the above-referenced spreadsheet and information provided by ██████'s, it is the Department's position that since no documentation has been submitted to substantiate the intangible property portion of the customer account purchases, the assessment of use tax on the entire amount capitalized from the purchase of customer accounts was correct.

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 40602-2120, 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 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.

[REDACTED], Inc.

November 9, 2005 – Final Ruling No. 2005-55

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

Sincerely,

FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN

Director

Division of Protest Resolution

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

