



ERNIE FLETCHER
GOVERNOR

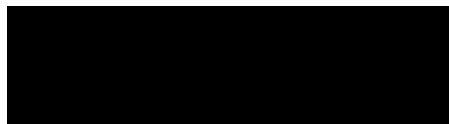
OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED], INC.

Contact:



Final Ruling No. 2006-02
January 4, 2006

Sales and Use Tax Assessment
Periods January 1, 1998 through December 31, 2001

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments against [REDACTED] for the periods January 1, 1998 through December 31, 2001. The following schedule reflects the total underpayment, including applicable interest accrued to date for each period.

Period	Tax	Interest as of 10/24/05	Fee	Penalties	Total per Period
CYE 12/98	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
CYE 12/99	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
CYE 12/00	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
CYE 12/01	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

By letter dated ██████████, 2002, ██████████'s protest was delivered to the Department of Revenue disputing these assessments. For the reasons that follow, these assessments are a legitimate tax liability of ██████████ to the Commonwealth of Kentucky.

First, the Department's audit determined that during the period in question, additional receipts were subject to tax in accordance with Kentucky Revised Statute 139.050 (as in effect prior to July 1, 2004). Furthermore, in reference to KRS 139.260, it is stated that "...it shall be presumed that all gross receipts are subject to the tax until the contrary is established." On the dates of ██████████, 2003, ██████████, 2004, ██████████, 2004, ██████████, 2004, and ██████████, 2005, the Department requested documentation concerning the additional receipts subject to tax. To date, no such documentation has been provided by the Taxpayer. The Taxpayer's last response to the Department's letters was dated ██████████, 2004 and was received by the Department on or about ██████████, 2004. The Taxpayer declined to provide documents to the Department. Rather, it offered to make these documents available for the Department's review. The Taxpayer has failed to meet its burden as required by KRS 139.260.

Second, during the audit period in question, the deduction for bad debts was overreported, resulting in an unallowable deduction adjustment. Kentucky Revised Statute 139.350 provides:

"...a retailer is relieved from liability to collect use tax which shall become due and payable subsequent to June 30, 1960, insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes." (Emphasis added)

The auditor confined the deduction for bad debts taken per sales and use tax returns to the deduction taken per Federal income tax returns, as prescribed under KRS 139.350.

Third, the Taxpayer protested certain sales invoices being held in the audit as unallowable deductions. Taxpayer maintains that sales tax was included in the total sales price denoted on such sales invoices, even though Taxpayer did not separately state the sales tax. KRS 139.210 provides as follows:

"The tax shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales."

A separate display of tax and price is a requirement of Kentucky statutes, as demonstrated above.

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.

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

