



ERNIE FLETCHER
GOVERNOR

OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED] DBA [REDACTED]

Contact: [REDACTED], CEO

[REDACTED]
DBA [REDACTED]

[REDACTED]

FINAL RULING NO. 2006-08
February 24, 2006

Sales and use tax assessments
for the periods January 1, 2000 through September 30, 2003

FINAL RULING

The Kentucky Department of Revenue has issued sales and use tax assessments to [REDACTED] DBA [REDACTED] totaling \$[REDACTED], plus interest and amnesty fees for the periods January 1, 2000 through September 30, 2003. The following schedule reflects the total underpayment for each period.

Period	Tax	Interest as of 12/16/2005	Amnesty Fee	Total per Period
1/1/00-7/31/00	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8/1/00-7/31/01	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8/1/01-11/30/01	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/1/01-7/31/02	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8/1/02-7/31/03	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8/1/03-9/30/03	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

██████████, located in ██████████, KY, manufactures, repairs and installs signs and acts as both a contractor and a retailer, depending on the job performed.

The items at issue are 1) the assessment of use tax on materials used to make signs that were incorporated into real property for tax exempt organizations; 2) the assessment of use tax on materials that were used in repairing existing signage; and 3) the disallowance of the deduction for labor, where labor was not separately stated on invoices involving retail transactions.

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

Issue 1:

The Taxpayer treated itself as a retailer of tangible personal property for all transactions during the audit period, and maintains that this is standard procedure in the sign industry. Resale certificates were issued when materials were purchased; therefore, no Kentucky sales tax was paid on materials used on jobs. The auditor examined all sales invoices in detail to determine whether the Taxpayer was acting as a contractor or a retailer. For those jobs where materials were used in making signs that were incorporated into real property, the Department determined that the Taxpayer was acting as a contractor. This is supported by 103 KAR 26:070(1), which states in part:

All sales to contractors, subcontractors, builders or owners of building materials, fixtures and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling, or repairing such structure or improvement are subject to the sales or use tax at the time of sale to the contractor, subcontractor, builder or owner.

Of the above-mentioned jobs, use tax was assessed for those jobs that were performed for tax exempt organizations. The Taxpayer contends that because they accepted exemption certificates in good faith for these transactions, no use tax should be due. The Department's position is supported by 103 KAR 26:070(3), which states:

A contractor may not claim that the purchase of materials or fixtures is not subject to the tax because the property is to be used in fulfilling a contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

The Taxpayer contends that signage should be considered tangible personal property because the Department classifies it as such for property tax purposes, but not for sales and use tax purposes. The Department maintains that any differences in treatment between property tax and sales tax are based upon long-standing administrative construction and are supported by 103 KAR 26:070.

Issue 2:

The Department assessed use tax on materials that the Taxpayer used in repairing existing signage. The Taxpayer believes that they act as repairers and reconditioners of personal property, and therefore, should be considered retailers. The Department's position is supported by 103 KAR 26:070(1), which states in part:

All sales to contractors, subcontractors, builders or owners of building materials, fixtures and supplies which are to be incorporated or fabricated into any structure or improvement to real estate (*emphasis added*) by the process of erecting, remodeling, or repairing (*emphasis added*) such structure or improvement are subject to the sales or use tax at the time of sale to the contractor, subcontractor, builder or owner.

Issue 3:

The Department maintains that the labor deduction on retail transactions is invalid for invoices on which labor charges were not separately stated. KRS 139.050(3)(c), which was in effect during the audit period, provided that gross receipts do not include the price received for labor or services used in installing or applying the property sold. However, Regulation 103 KAR 30:180 states that:

Labor and service charges for installing or applying property sold are to be included in the seller's gross receipts unless the price for installing or applying the property and the price for the property are separately stated on the invoice or bill given to the customer at the time of sale.

Based upon the foregoing, the Department has determined that the sales and use tax audit assessment totaling \$ [REDACTED] (plus applicable interest and fees) is deemed a legitimate liability of [REDACTED] DBA [REDACTED] due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

February 24, 2006 – Final Ruling No. 2006-08

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

