



FINANCE AND ADMINISTRATION CABINET OFFICE OF THE SECRETARY

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Governor

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John R. Farris
Secretary

In the matter of:

██████████ COMPANY

Contact: ██████████ Company

Attn: ██████████

FINAL RULING NO. 2006-108
November 2, 2006

Sales and use tax assessments for the periods
November 1, 1999 through December 31, 2003

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments against ██████████ Company for the periods November 1, 1999 through December 31, 2003. The following schedule reflects the total underpayment, applicable interest accrued to date, and all assessed fees and penalties for each period.

Period	Tax	Interest as of 11-2-2006	Amnesty Fees	Penalty	Total Per Period
11/01/1999 – 12/31/1999	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2000 – 09/30/2000	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
10/01/2000 – 12/31/2000	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2001 – 09/30/2001	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
10/01/2001 – 12/31/2001	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2002 – 12/31/2002	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/2003 – 12/31/2003	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

██████ Company was incorporated as an S Corporation in Kentucky on ██████, 1988 and was certified as a qualified business in ██████'s enterprise zone on ██████, 1993. The taxpayer applied for a consumer's use tax account number on ██████, 2000. On January 1, 2003, the assets of the business were sold to ██████ Company, but the corporation was not dissolved. ██████ Company's consumer account was cancelled on July 18, 2003 with the final return covering the period July 1, 2003 through August 31, 2003. The business was decertified as a qualified business in an enterprise zone on ██████, 2003.

The taxpayer's primary business was custom fabrication and installation of ██████ and related equipment such as ██████, ██████, ██████, ██████, etc. mostly into hospitals, schools, and university and government buildings. The taxpayer also manufactured ██████ under the brand name "██████" and sold them mainly to out of state retailers for resale. Lastly, the taxpayer fabricated items to customers' specifications and sold them at retail, usually to other contractors often working on the same job. As such, the auditor, through review of the taxpayer's records, determined that the taxpayer was considered a contractor/manufacturer/retailer with percentages ██████/██████/██████ respectively.

For the periods listed above, ██████ Company had unreported taxable receipts totaling \$██████. Additionally, the taxpayer had unreported taxable purchases of capital assets and consumable supplies totaling \$██████ and \$██████ respectively.

At issue are the following:

1. Whether the Department of Revenue properly assessed use tax on items of tangible personal property purchased by the taxpayer for use in fulfilling job contracts, along with purchases for use in the manufacturing process under the Enterprise Zone exemption guidelines for contractors and for manufacturers.

2. Whether the Department of Revenue gave proper credit for items purchased for use in the Enterprise Zone, for items purchased for farm use, for items purchased for jobs in which proper exemption certificates existed, and for items purchased for use in an expanding business.

As provided in KRS 154.45-090, certain tax advantages, credits, and exemptions are available for qualified businesses in an Enterprise Zone.

For further clarification concerning areas of exemption for qualified businesses in the Enterprise Zone, 306 KAR 1:040, states in part:

- (1) To claim an exemption on sales and use tax for building materials used for remodeling, rehabilitation, or new construction within an enterprise zone, the property owner shall complete Revenue Form 51A152 and submit it to the vendor at the time the building materials are purchased.

- (2) To claim an exemption on sales and use tax for new and used machinery and equipment, a qualified business shall complete Revenue Form 51A151 and submit it to the vendor at the time the machinery or equipment is purchased.
- (3) To claim an exemption on sales and use tax for exempt building materials, machinery, or equipment installed in an enterprise zone, a contractor having contracts with a qualified business or other property owner within an enterprise zone must execute the appropriate certificate of exemption jointly with the person or business entitled to receive the exemption.
- (4) To claim an exemption on vehicle usage tax for a commercial or noncommercial vehicle purchased and used by the qualified business solely for business use, the qualified business shall complete Revenue Form 71A151 and submit it to the county clerk in the county where the vehicle is registered.
- (5) To claim the enterprise zone tax credit, a qualified business that files its state income tax pursuant to KRS 141.040 shall submit a Schedule EZC Form 720, 41A720EZC with its Kentucky state income tax return.

In letter dated ██████████, 2006, ██████████ Company protested the entire audit assessment and requested additional time to review the audit. No other information was provided with the letter. The Department of Revenue, in letter dated ██████████, 2006, granted ██████████ Company an extension to submit supporting documentation required by KRS 131.110(1). By letter dated ██████████, 2006, the Department notified ██████████ Company of its intent to initiate administrative action. However, ██████████ Company has failed to submit any documentation that would allow the Department a basis for reconsideration of the sales and use tax underpayments identified above.

The Department of Revenue has issued repeated requests with additional letters dated ██████████, 2006 and ██████████, 2006 to ██████████ Company for information and documents that would permit the Department to evaluate the general protest contained in the initial letter. ██████████ Company has accordingly failed to remit a supporting statement as required by KRS 131.110(1).

At issue is whether ██████████ Company 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.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with

“something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must “provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

The courts have held that this statutory provision (KRS 131.110(1)) is “mandatory in nature” and that failure to submit documentation as it requires will result in the taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, Ky. App., 779 S.W.2d 234 (1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

Therefore, the outstanding sales and use tax assessments totaling \$██████████ (plus applicable interest, penalties and fees) are deemed legitimate liabilities of ██████████ Company due the Commonwealth of Kentucky.

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:

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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

