



ERNIE FLETCHER
GOVERNOR

OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
(502) 564-6785 FAX

ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED], INC.

Contacts: [REDACTED], Atty.
[REDACTED] PLLC

Final Ruling No. 2006-14
March 22, 2006

[REDACTED], Owner/Partner
[REDACTED], Inc.
[REDACTED]

[REDACTED], Owner/Partner
[REDACTED], Inc.
[REDACTED]

[REDACTED], Atty
[REDACTED]

Sales and Use Tax Assessment
Periods September 1, 1998 through March 31, 2001

FINAL RULING

The Kentucky Department of Revenue has outstanding sales tax assessments against [REDACTED], Inc. (hereafter "Taxpayer"), for the periods September 1, 1998 through March 31, 2001. The following schedule reflects the total underpayment, including applicable interest accrued to date and applicable penalty for each period.

██████████, Inc.

March 22, 2006-Final Ruling No. 2006-14

Page 2

Period	Tax	Interest as of 12/07/05	Penalty	Total per Period
09/01/98 – 12/31/98	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/99 – 12/31/99	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/00 – 12/31/00	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/01 – 03/31/01	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Totals	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

In addition, the Taxpayer was assessed sales tax in the amount of \$██████████ on Unallowable Deductions, \$██████████ tax on capital items subject to use tax, and \$██████████ tax on underreported receipts. To date, Taxpayer has not made payment of any portion of this audit liability.

For the reasons that follow, these assessments are deemed a legitimate liability of Taxpayer to the Commonwealth of Kentucky.

Taxpayer's first issue pertains to consignment sales. Taxpayer's position is that fees paid out to other individuals as part of a consignment transaction are deductible from gross receipts subject to tax.

Kentucky Revised Statutes do not provide a deduction from Gross Receipts for sales tax purposes for proceeds paid out of sales to other individuals as part of a consignment transaction. Furthermore, 103 KAR 25:050 Section 1, states in part as follows:

"A factor, or agent of an owner, or former owner or factor, to whom property is consigned, entrusted, or otherwise delivered for the purpose of selling shall be considered the retailer of such property when sold. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon..."

Taxpayer's next issue pertains to underreported receipts being taxed in accordance with KRS 139.260, which states that:

"For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property sold by any person for delivery in this state are subject to the tax until the contrary is established."

██████████, Inc.

March 22, 2006-Final Ruling No. 2006-14

Page 3

Under the provisions of the above statute, gross receipts of a Kentucky retailer are presumed to be taxable until the retailer clearly establishes that the receipts include sales which are entitled to exclusion from the levy of the tax. Taxpayer has yet to provide a detailed explanation with correlating documentation with regard to these underreported receipts.

On ██████████, 2002, a letter of protest was received from ██████████, Attorney representing ██████████, Owner/Partner of ██████████, Inc. Taxpayer is protesting the underreported receipts portion of the audit. In this letter, it was stated ██████████ did not have records to provide at that time.

Letters were sent to ██████████, ██████████, ██████████, and ██████████ on both ██████████, 2005 and ██████████, 2005 indicating the Department would proceed with appropriate administrative action if no substantive supporting documentation was submitted. Furthermore, the Department spoke with ██████████ on ██████████, 2005, where it was reiterated what documentation would be required.

In early ██████████ 2005, ██████████ provided records to the Division of Protest Resolution. However, these records were in no perceptible order, and could not be translated to provide the detailed explanation for additional receipts as previously requested.

To date, no substantiating documentation has been provided with this protest.

Therefore, the outstanding sales tax assessments totaling \$██████████ (plus applicable interest and penalties) are deemed legitimate liabilities of ██████████ Inc. 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.

██████████, Inc.

March 22, 2006-Final Ruling No. 2006-14

Page 4

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

