



██████████, Inc. business activity is general contract work.

At issue are certain capital purchases made by ██████████, Inc. that the Department of Revenue deemed to be subject to use tax pursuant to KRS 139.310.

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

██████████, Inc. submitted a letter of protest dated ██████████, 2005 and requested a conference. It was stated in the letter of protest that an assumption should not be made that all capital purchases were made without the payment of use tax. At the conference held on ██████████, 2005, ██████████, Inc. maintained that use tax was paid at the time of purchase for capital expenditures. No evidence was presented to show that tax was paid for these purchases.

A suggestion was made at the conference that ██████████, Inc. contact their vendors to obtain copies of invoices for capital purchases made. A deadline of November 6, 2005 was given to obtain copies of the invoices. As the deadline approached an extension was requested to give ██████████, Inc until ██████████, 2005 to obtain invoices.

In a telephone conversation with ██████████, Inc. on ██████████, 2006, it was stated that documentation to substantiate that taxes were paid on capital purchases could not be provided. At this time a request was made for a copy of the statute that allows the audit to go back to the start up of a business. A copy of KRS 139.620 was mailed to ██████████, Inc on ██████████, 2006. The Department maintains that use tax is due and payable to Kentucky for these transactions. This is supported by KRS 139.310, 139.330 and 139.720(1) and (2).

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.

KRS 139.330 states:

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. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a

retailer who is authorized by the department, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purpose in this state, given to the purchaser pursuant to KRS 139.340 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

KRS 139.720(1) and (2) states:

- (1) Every seller, every retailer, and every person storing, using and otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the department may require.
- (2) Every such seller, retailer, or person who files the returns required under this chapter shall keep such records for not less than four (4) years from the making of such records unless the department in writing sooner authorizes their destruction.

It is the responsibility of each taxpayer to maintain appropriate documentation to support their contention that specific purchases are not subject to tax or tax had previously been paid. As no documentation has been provided, the Department has no choice but to determine that these purchases are properly subject to tax.

Based upon the foregoing, the Department has determined that the sales and use tax audit assessment totaling \$██████████ (plus applicable interest, penalties, and fees) is deemed a legitimate liability 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.

██████████, Inc.

July 28, 2006 – Final Ruling No. 2006-55

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

