



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.
Commissioner

In the matter of:

██████████, INC.

Contact: ██████████, Inc.
██████████

FINAL RULING NO. 2008-26
May 19, 2008

Sales and use tax assessments
for the periods January 1, 1997 through May 31, 2005

FINAL RULING

The Kentucky Department of Revenue has an outstanding sales and use tax assessment totaling \$██████████ against ██████████, Inc. ("██████████") for the period January 1, 1997 through May 31, 2005. The following schedule reflects the amount of outstanding tax and applicable interest, penalties and fees accrued to date.

Period	Tax	Interest as of 5/19/08	Penalties and Fees	Total per Period
1/1/97 - 12/31/97	\$██████████	\$██████████	\$██████████	\$██████████
1/1/98 - 12/31/98	\$██████████	\$██████████	\$██████████	\$██████████
1/1/99 - 12/31/99	\$██████████	\$██████████	\$██████████	\$██████████
1/1/00 - 12/31/00	\$██████████	\$██████████	\$██████████	\$██████████
1/1/01 - 11/30/01	\$██████████	\$██████████	\$██████████	\$██████████
12/1/01 - 12/31/01	\$██████████	\$██████████	\$██████████	\$██████████
1/1/02 - 12/31/02	\$██████████	\$██████████	\$██████████	\$██████████
1/1/03 - 12/31/03	\$██████████	\$██████████	\$██████████	\$██████████
1/1/04 - 12/31/04	\$██████████	\$██████████	\$██████████	\$██████████
1/1/05 - 5/31/05	\$██████████	\$██████████	\$██████████	\$██████████
TOTAL	\$██████████	\$██████████	\$██████████	\$██████████

The balance due includes the uncontested tax of \$██████████ plus applicable interest, fees and penalties.

██████████ is in the business of contract ██████████ mining. At issue is the assessment of sales tax on the sale of its assets on ██████████, 2002, ██████████, 2002 and ██████████, 2003, which consisted of mining equipment.

██████████ contends that the sale of the mining equipment qualifies as an exempt occasional sale since they are not in the business of buying and selling mining equipment.

It is the Department's position that the sale does not qualify for the occasional sale exemption. KRS 139.070(1)(a) defines "occasional sale" and states in part:

'Occasional sale' includes: (a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. [Emphasis added]

KRS 139.110(1)(c) defines a retailer as:

Every person making more than two (2) retail sales during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;

██████████ made three retail sales between ██████████, 2002 and ██████████, 2003; as a result, ██████████ established itself as a retailer. Therefore, ██████████'s sale of the mining equipment did not qualify for an exemption under KRS 139.070(1)(a) and 139.470(4).

The statutory basis for the penalty assessed is found in subsection 2 of KRS 131.180 (Uniform Civil Penalty Act), which states in part:

Any taxpayer who... fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid;...

In addition, 131.440, Section (1), subpart (b) states:

Taxes which are assessed and collected after the amnesty period for taxable periods ending or transactions occurring prior to December 1, 2001, shall be charged a cost of collection fee of twenty-five percent (25%) at the time of assessment.

For those periods where the penalties were assessed, ██████████ did not timely pay at least seventy-five percent (75%) of the tax determined to be due pursuant to KRS 131.180(2) and the period January 1, 1997 through November 30, 2001 is within the provisions of 131.440(1)(b).

Based upon the foregoing, and the information supplied with the protest and supporting statement, the Department has determined that the sales tax assessments totaling \$ ██████████ (plus applicable interest and penalties) are 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.

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:

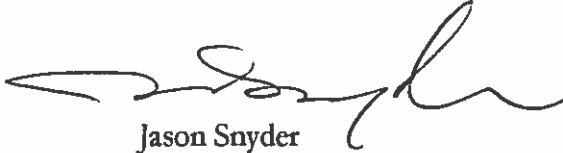
██████████, Inc.

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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

A handwritten signature in black ink, appearing to read "Jason Snyder", with a stylized flourish at the end.

Jason Snyder
Executive Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED