

At issue is whether ██████████'s purchase of the ██████████ assets is subject to sales tax pursuant to KRS 139.670 and KRS 139.680. ██████████ contends that this liability should instead have been assessed against ██████████, because the Asset Purchase Agreement clearly stipulated that the Seller shall pay all sales taxes payable in connection with this transaction. ██████████ also contends that the Department did not issue the notice of tax due in a timely manner and as a result, ██████████ was unable to proceed against ██████████ to collect this tax amount. ██████████ passed away seven months after the business was sold.

KRS 139.670 states:

If any retailer liable for any amount under this chapter sells out his business or stock of goods, or otherwise quits business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the department showing that it has been paid or a certificate stating that no amount is due.

KRS 139.680 states:

(1) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the department shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the department of the amount that must be paid as a condition to issuing the certificate.

(2) Failure of the department to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided.

(3) The time within which the obligation of a successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs the later.

It is the Department's position that ██████ is liable for the unpaid sales tax because it did not withhold any tax amounts from the purchase price paid to the seller nor did it obtain a certificate from the seller indicating that no taxes were due, as required by KRS 139.670. Accordingly, the Department has properly assessed the unpaid sales tax liability against the purchaser, ██████, in accordance with KRS 139.670 and KRS 139.680.

Based upon the foregoing, the sales tax assessment totaling \$ ██████ (plus applicable interest and penalty) is a correct and legitimate liability of ██████ LLC due the Commonwealth of Kentucky.

This letter constitutes 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:

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.

██████, LLC

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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



Jason Snyder
Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

