



STEVEN L. BESHEAR  
Governor

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JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

██████████ COMPANY, INC.

Contact: ██████████ Company, Inc.

Attn: ██████████  
██████████

FINAL RULING NO. 2009-18  
March 23, 2009

Sales and use tax assessments  
for the periods October 1, 2002 through July 31, 2006

### FINAL RULING

The Kentucky Department of Revenue has an outstanding sales and use tax assessment totaling \$██████████ against ██████████ Company, Inc. ("██████████") for the period October 1, 2002 through July 31, 2006. The following schedule reflects the amount of outstanding tax and applicable interest accrued to date.

Period	Tax	Interest as of 3/23/09	Total per Period
10/01/02-12/31/02	\$██████████	\$██████████	\$██████████
01/01/03-12/31/03	\$██████████	\$██████████	\$██████████
01/01/04-12/31/04	\$██████████	\$██████████	\$██████████
01/01/05-12/31/05	\$██████████	\$██████████	\$██████████
01/01/06-07/31/06	\$██████████	\$██████████	\$██████████
<b>TOTAL</b>	<b>\$██████████</b>	<b>\$██████████</b>	<b>\$██████████</b>

██████████ operates new car dealerships for ██████████, ██████████, ██████████ and ██████████. ██████████ also operates a used car lot, a service department and an auto shop.

At issue are the following:

- (1) whether certain sales are exempt sales for resale under KRS 139.260 and KRS 139.270;
- (2) whether certain freight charges are exempt from tax under 103 KAR 30:070; and
- (3) whether certain purchases of tangible personal property are subject to use tax per KRS 139.330.

The statutory provisions referred to or quoted in this final ruling are the versions in effect for the audit period.

Issue 1: ██████████ contends that the issuance of a resale certificate relieved ██████████ of any tax liability in accordance with KRS 139.260, KRS 139.270 and KRS 139.490 (during the period October 1, 2002 through July 1, 2004).

KRS 139.260 states in part:

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. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provision of KRS 139.270;

KRS 139.270 states:

- (1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property:
  - (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
  - (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.

This relief from liability does not apply to a retailer or seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claiming of an exemption.

- (2) “Good faith” shall be demonstrated by the retailer or seller if the retailer or seller:
  - (a) Accepts a properly completed resale certificate or certificate of exemption; and
  - (b) Maintains a file of the certificate in accordance with KRS 139.720.
- (3) If the cabinet later finds that the retailer or seller exercised good faith according to the provisions of subsection (2) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the cabinet shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

(emphasis added)

It is Revenue’s position that ██████████ did not have the resale certificates on file as required under KRS 139.270(3). Consequently, ██████████ is not entitled to the good faith relief afforded by this statute.

Issue 2: ██████████ contends that freight charges for delivery by common carrier are exempt from tax under 103 KAR 30:070.

103 KAR 30:070 Section 1 states:

Tax does not apply to separately stated charges for transportation of property from the retailer’s place of business or other point from which shipment is made directly to a place specified by the purchaser, provided the transportation is by facilities other than those of the retailer, i.e., independent contract or common carrier, or United States mail. The charges may not, however, exceed the cost to the retailer of the transportation. Any amount billed to the customer in excess of such cost cannot be excluded from the measure of the tax as delivery charge.

The Department assessed use tax for shipping and handling charges that was not remitted to the Department. It is the Department's position that handling charges are considered services that are part of the sale of the property and subject to tax under KRS 139.050(2)(a) for the period October 1, 2002 through July 1, 2004. Furthermore, if handling charges are combined with freight and delivery charges, the total amount is subject to sales and use tax. KRS 139.050 was amended effective July 1, 2004 clarifying the Department's position and stated that all delivery charges by the seller are subject to tax under KRS 139.050(1)(d).

KRS 139.050 (effective July 1, 2004) states in part:

- (1) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
  - (a) The retailer's cost of the property sold;
  - (b) The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer
  - (c) Charges by the retailer for any service necessary to complete the sale;
  - (d) Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packaging; and

Issue 3: ██████████ contends that the purchase of ██████████ and a ██████████ are not subject to use tax under KRS 139.330 since sales tax was paid at the time of purchase.

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 of this chapter relating to the use tax, regarded as a retailer engaged in business 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.

██████████ has not submitted receipts, or any other documentation, from the retailers showing the sales tax was paid at the time of purchase. It is the Department's position that the purchase of ██████████ and a ██████████ are subject to tax under KRS 139.330.

Based upon the foregoing, and the information supplied with the protest and supporting statement, the Department has determined that the sales and use tax assessments totaling \$██████████ (plus applicable interest) are legitimate liabilities of ██████████ Company, 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:

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 dark ink, appearing to read "Jason Snyder", is written over the typed name.

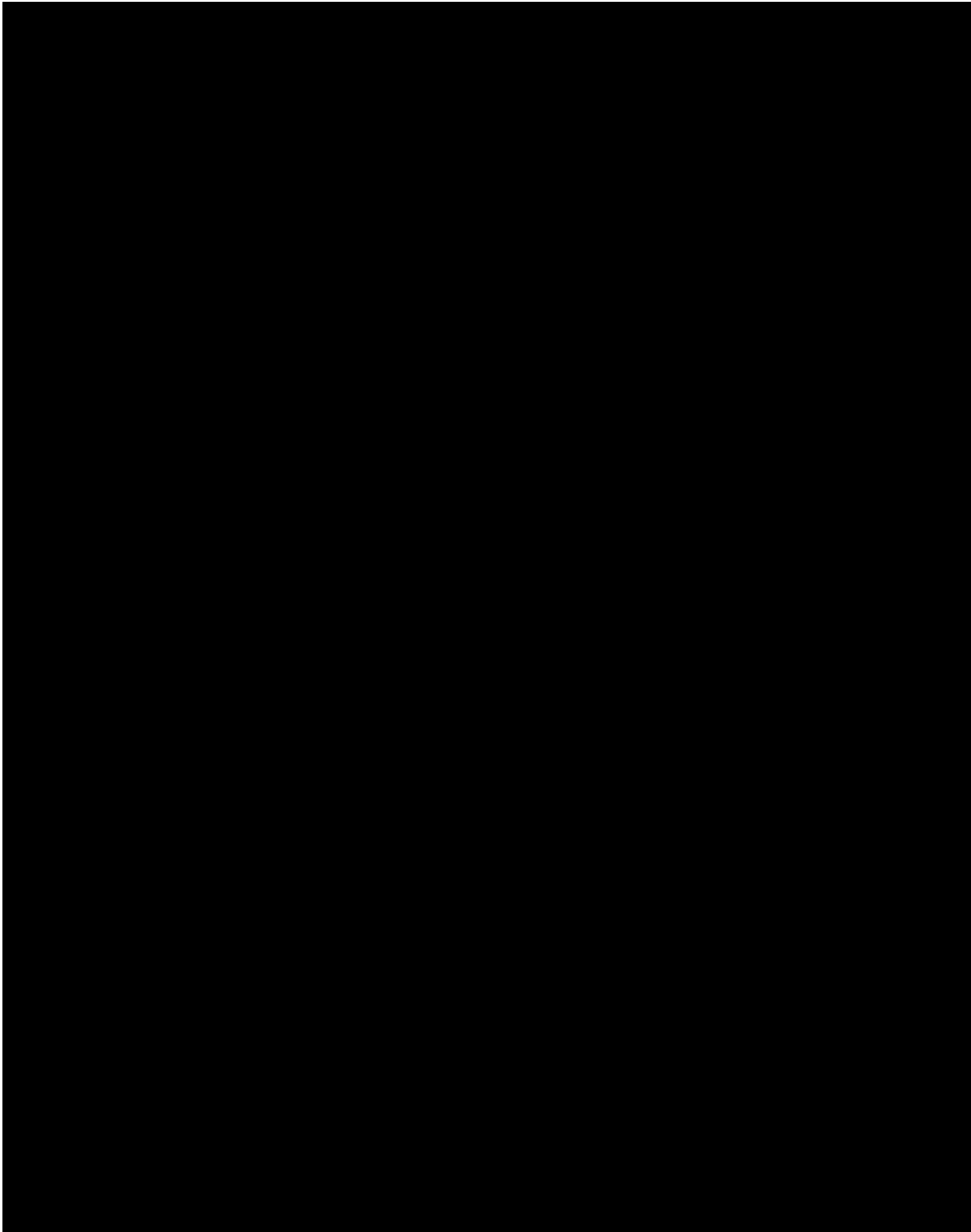
Jason Snyder  
Executive Director  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED













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The first part of the paper discusses the importance of understanding the cultural context of the research. It highlights the need for researchers to be sensitive to the values and beliefs of the communities they are studying. This is particularly important in the field of education, where cultural differences can significantly impact learning outcomes.

The second part of the paper focuses on the methodology used in the study. It describes the process of selecting participants, collecting data, and analyzing the results. The authors emphasize the importance of using a mixed-methods approach to capture both quantitative and qualitative data.

The third part of the paper presents the findings of the study. It shows that there are significant differences in learning outcomes between students from different cultural backgrounds. These differences are attributed to a variety of factors, including language barriers, social norms, and access to resources.

The fourth part of the paper discusses the implications of the findings for education. It suggests that educators should take steps to create a more inclusive and culturally responsive learning environment. This can be achieved through a variety of strategies, such as using culturally relevant materials, providing language support, and fostering a sense of community.

Finally, the paper concludes by emphasizing the need for further research in this area. It calls for more studies that explore the cultural factors that influence learning outcomes and develop effective interventions to address these challenges.



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