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Governor

FINANCE AND ADMINISTRATION CABINET
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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	\$██████████	\$██████████	\$██████████
TOTAL	\$██████████	\$██████████	\$██████████

██████████ 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.

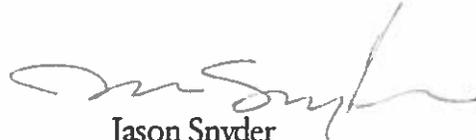
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation 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.

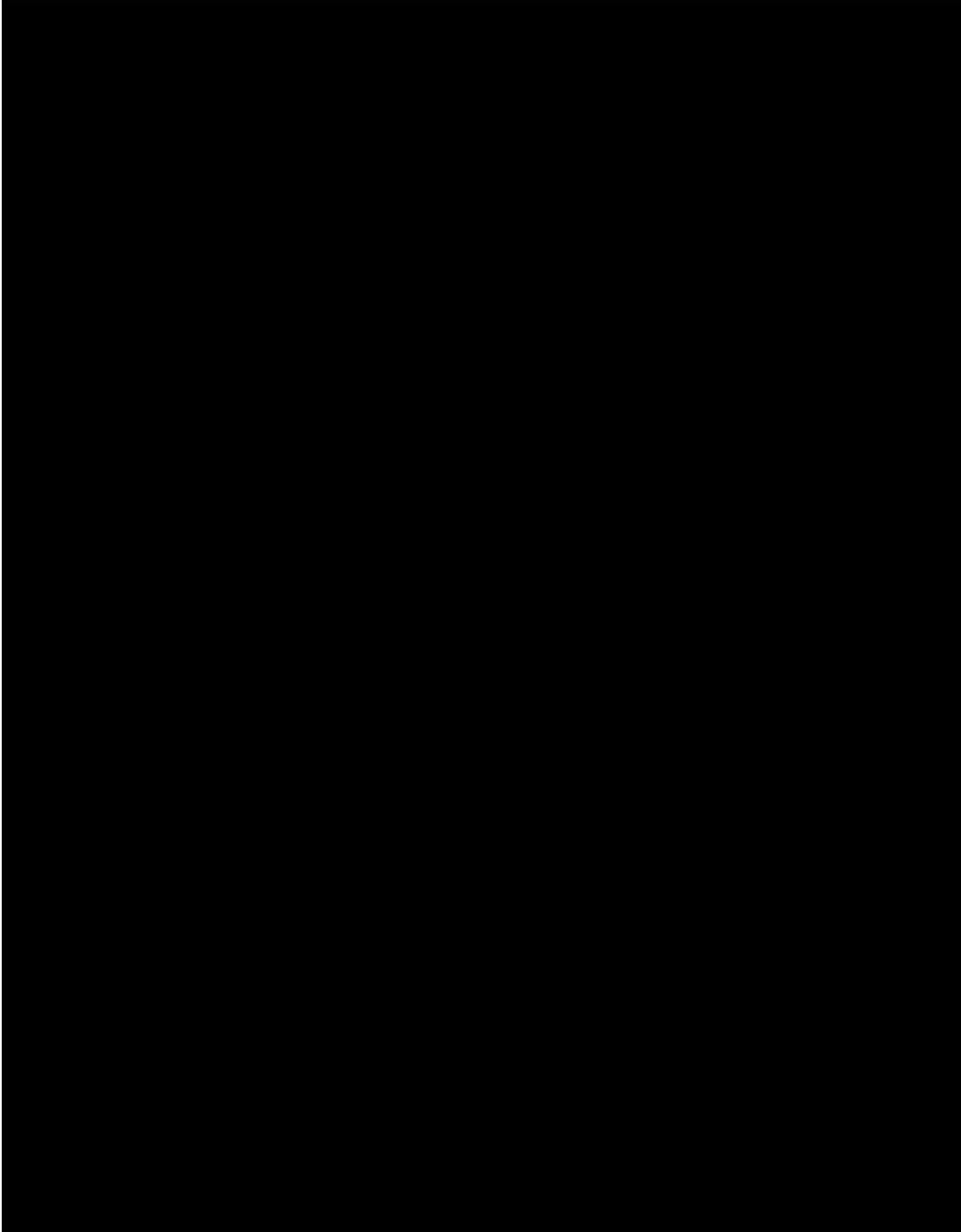
You will be notified by the Clerk of the Board of the date and time set for any hearing.

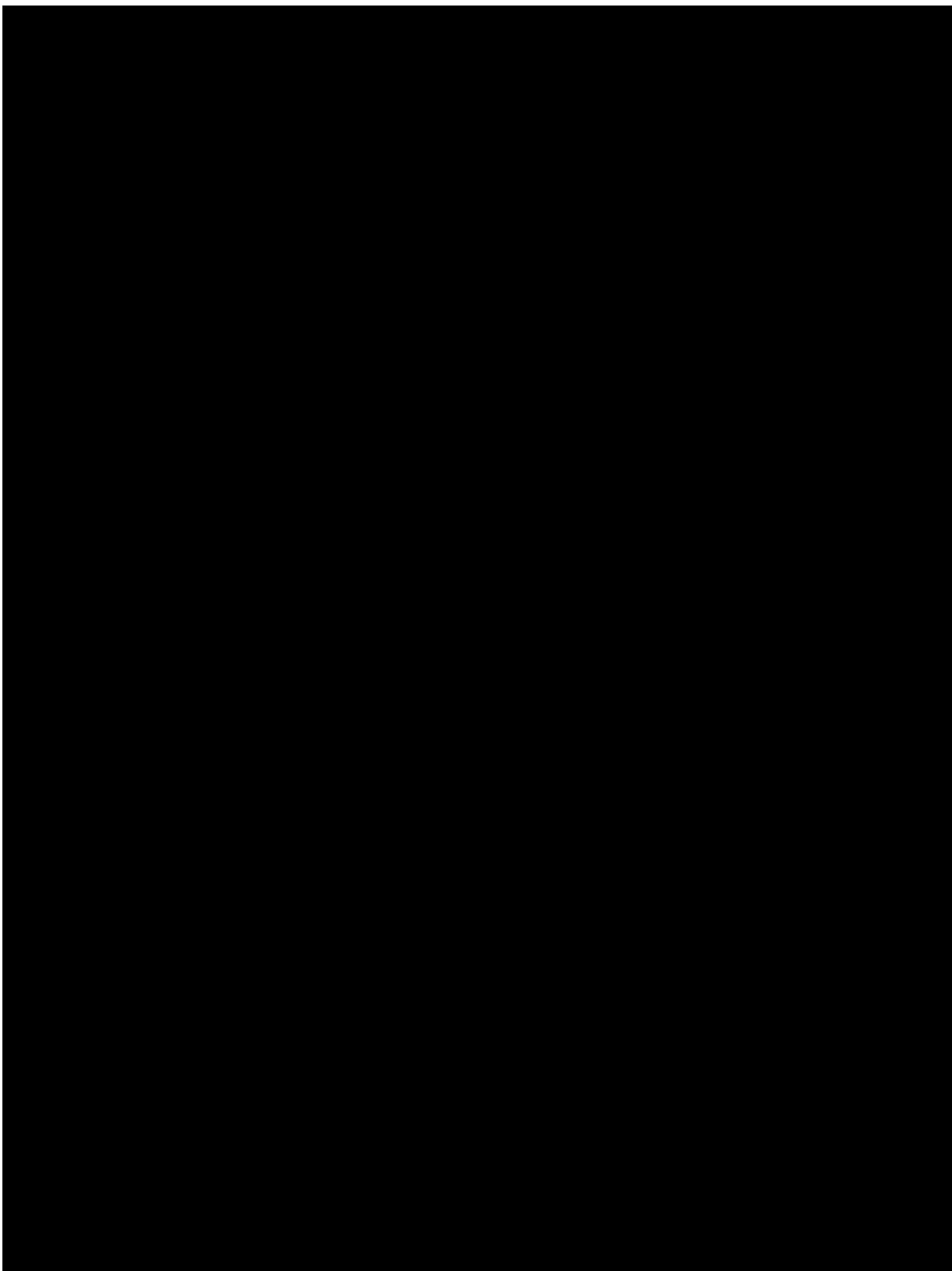
Sincerely,
Finance and Administration Cabinet

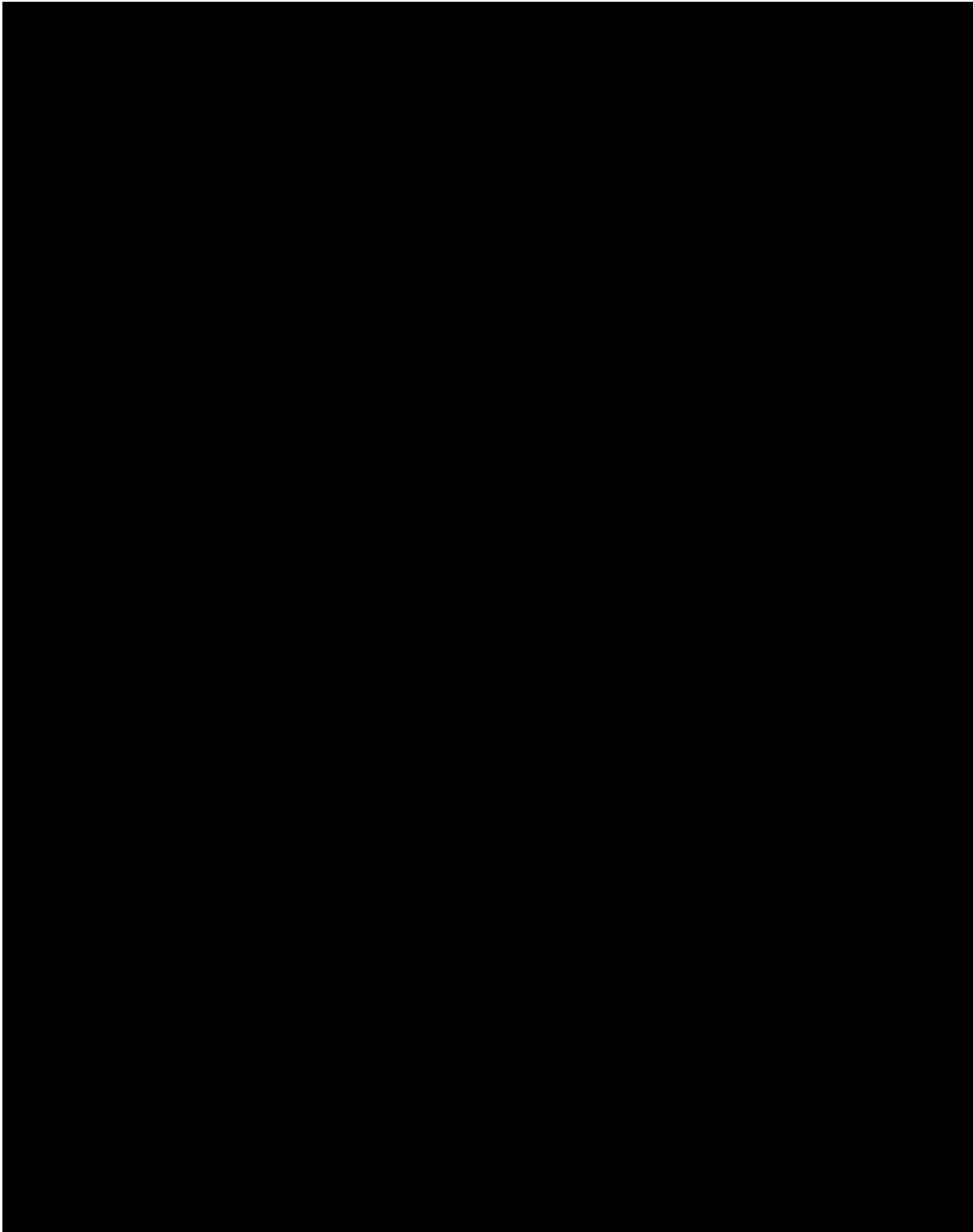


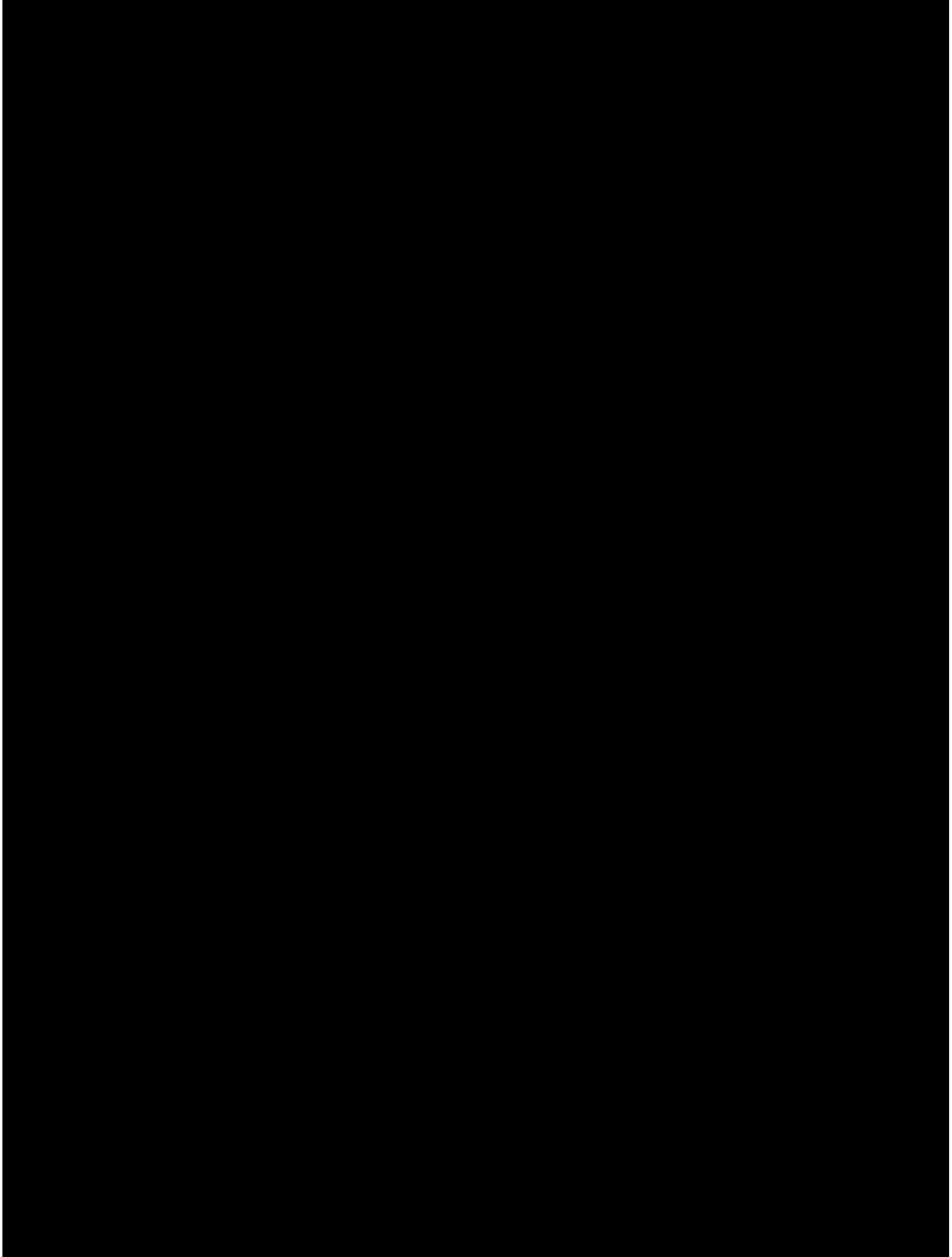
Jason Snyder
Executive Director
Office of Legal Services for Revenue

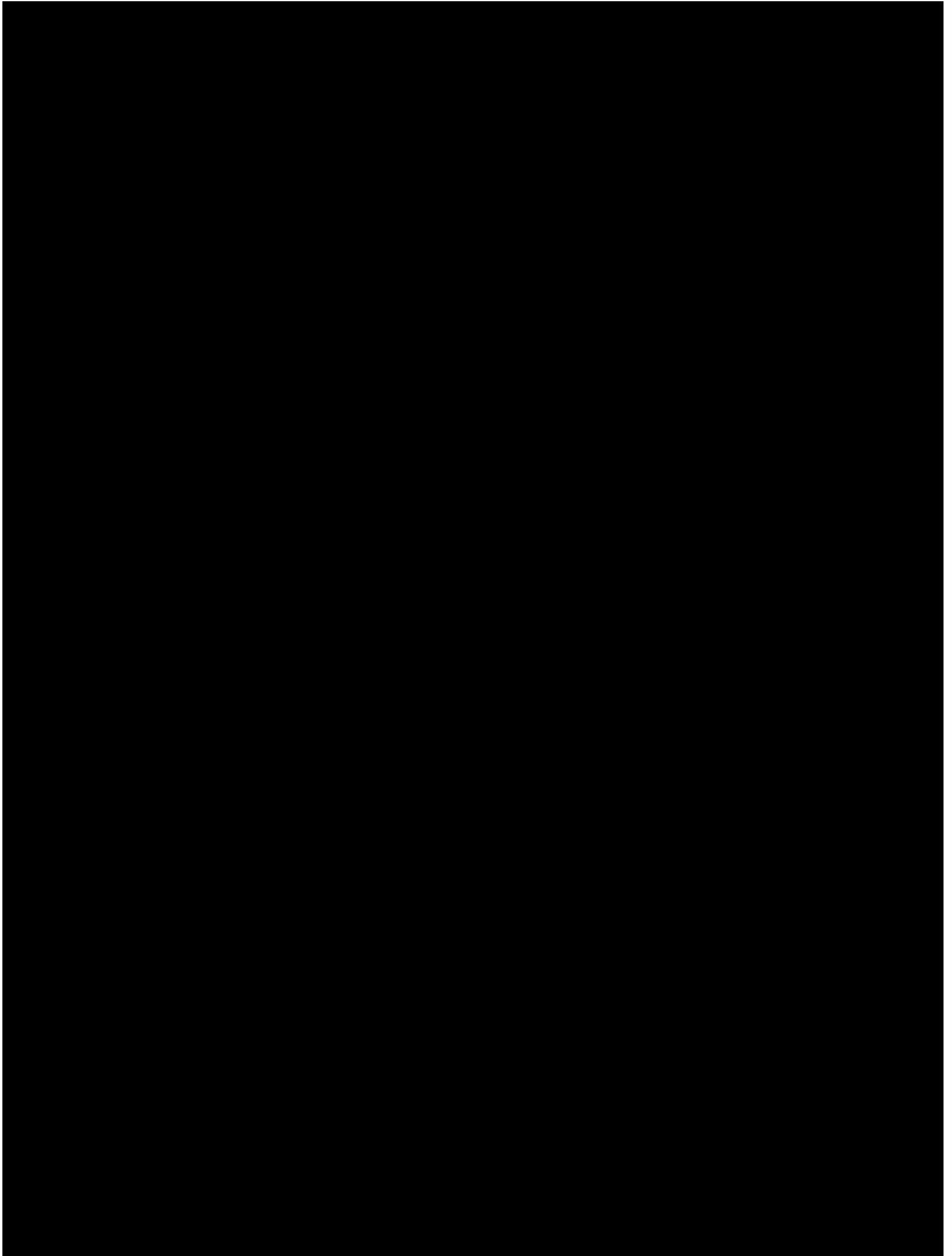
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

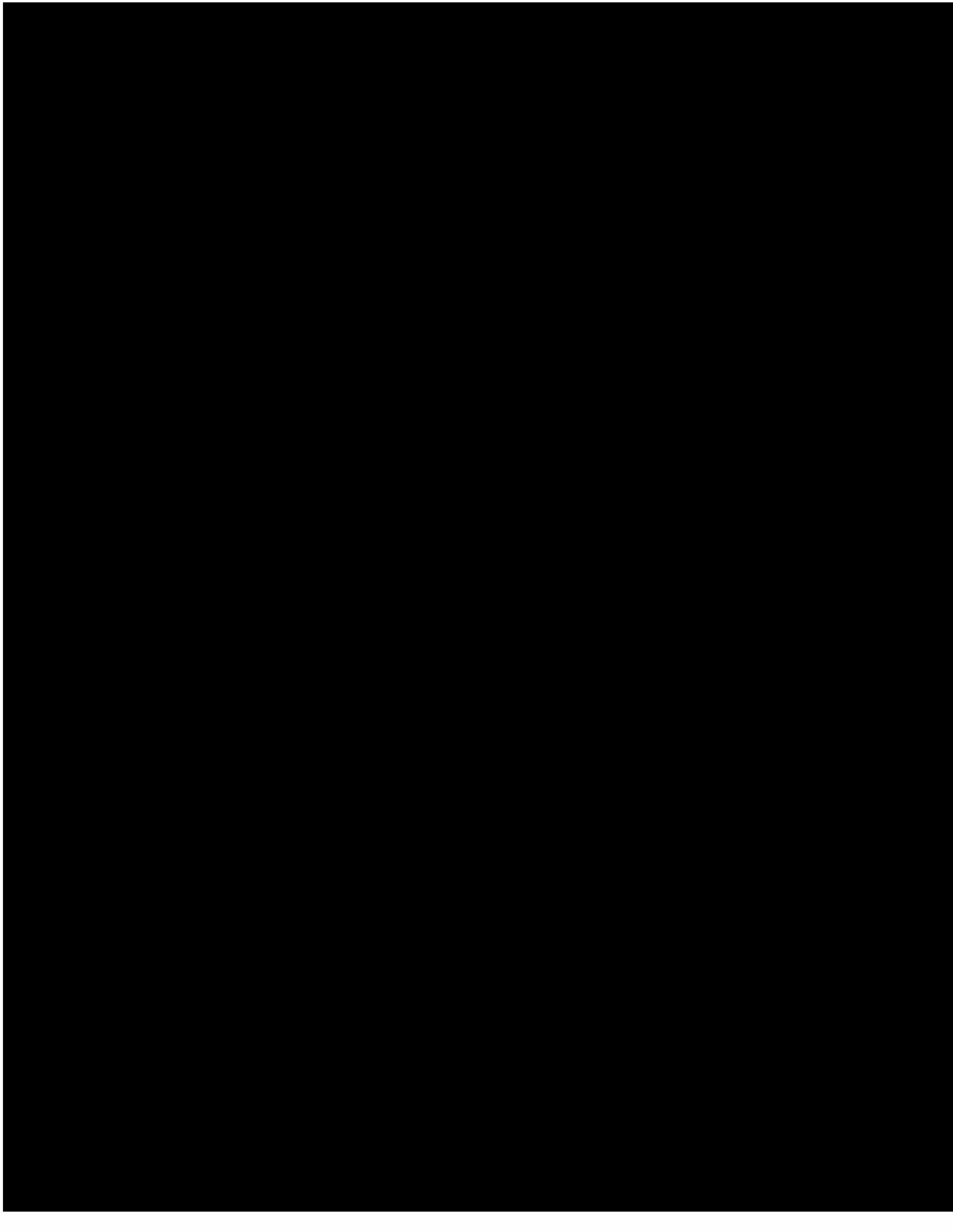


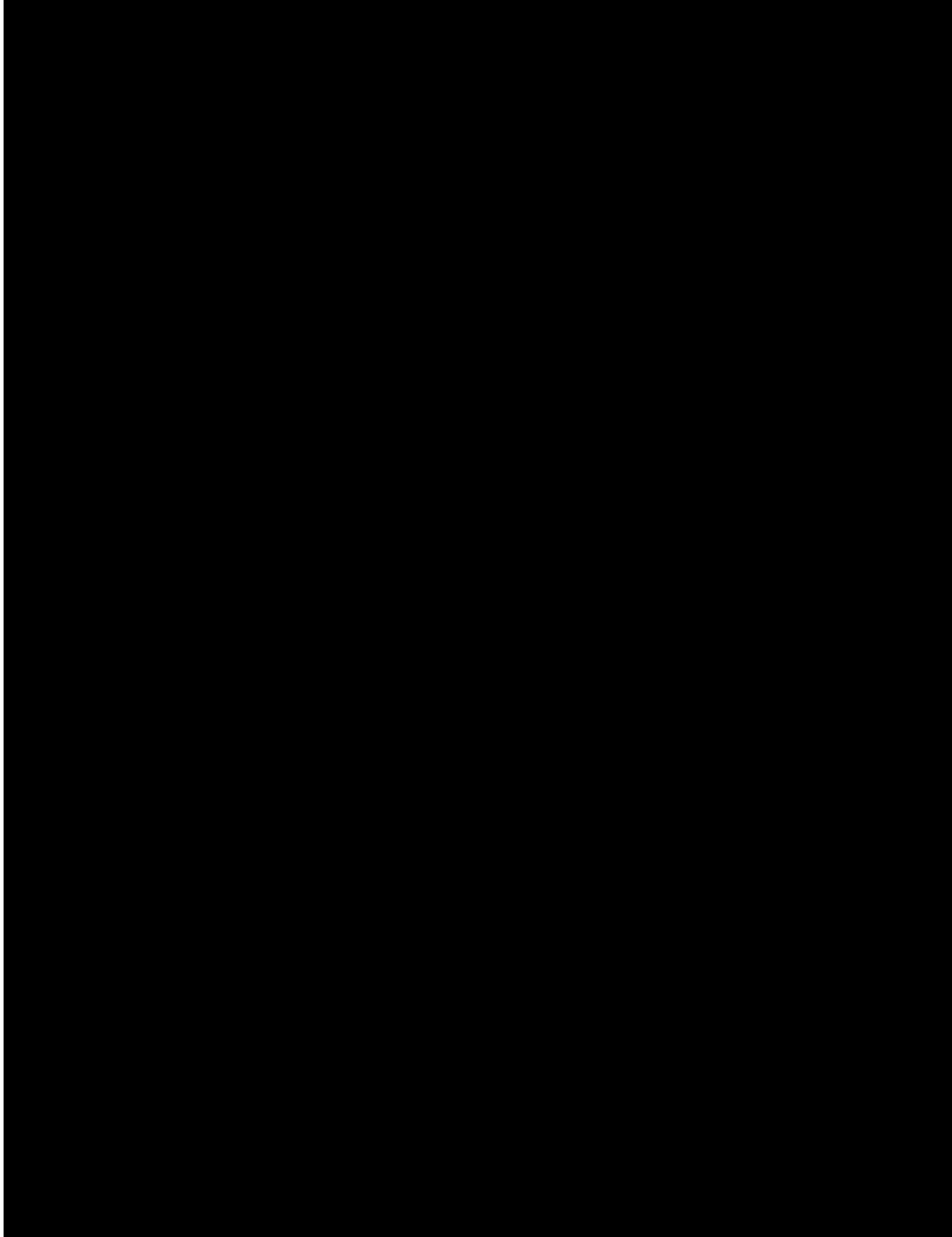








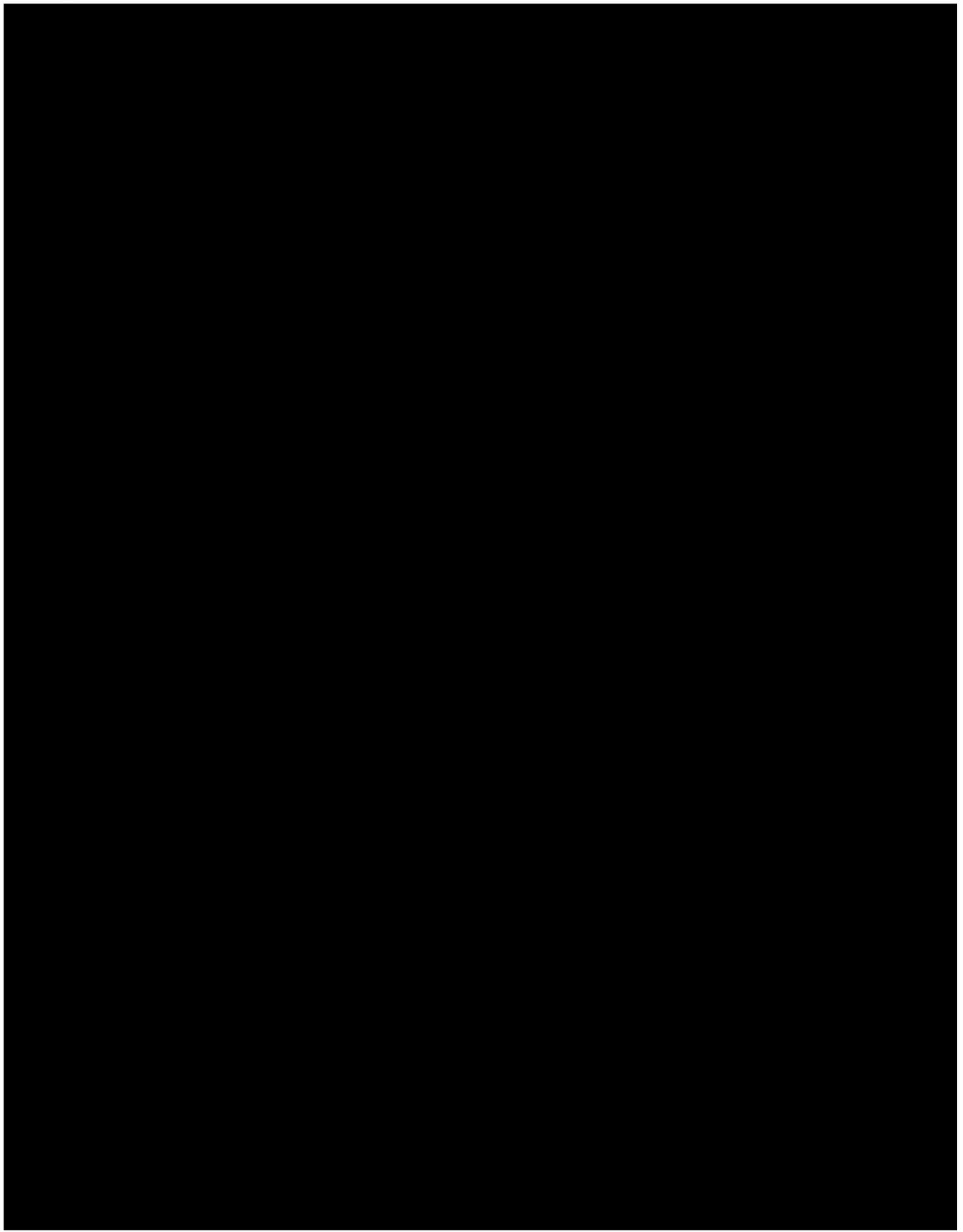




The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt, invoice, and bill should be properly filed and indexed for easy retrieval. This not only helps in tracking expenses but also ensures compliance with tax regulations. The document provides a detailed guide on how to set up a filing system, including the use of folders, labels, and digital tools. It also highlights the benefits of regular audits and reconciliations to identify any discrepancies or errors in the accounts.

In the second part, the author explores various budgeting techniques and how to apply them to different types of businesses. It covers the basics of budgeting, such as identifying income sources and fixed costs, and then moving on to more advanced strategies like zero-based budgeting and the 50/30/20 rule. The document includes several practical examples and templates to help readers create their own budgets. It also discusses how to adjust budgets as circumstances change and how to use budgeting to achieve financial goals.

The third section focuses on investment strategies and risk management. It introduces different types of investments, such as stocks, bonds, and real estate, and explains how to diversify a portfolio to reduce risk. The author provides insights into market trends and offers advice on when to buy and sell. Additionally, the document covers the importance of insurance and estate planning, and how to choose the right products and services for individual needs. It concludes with a summary of key takeaways and a call to action for readers to take control of their financial future.

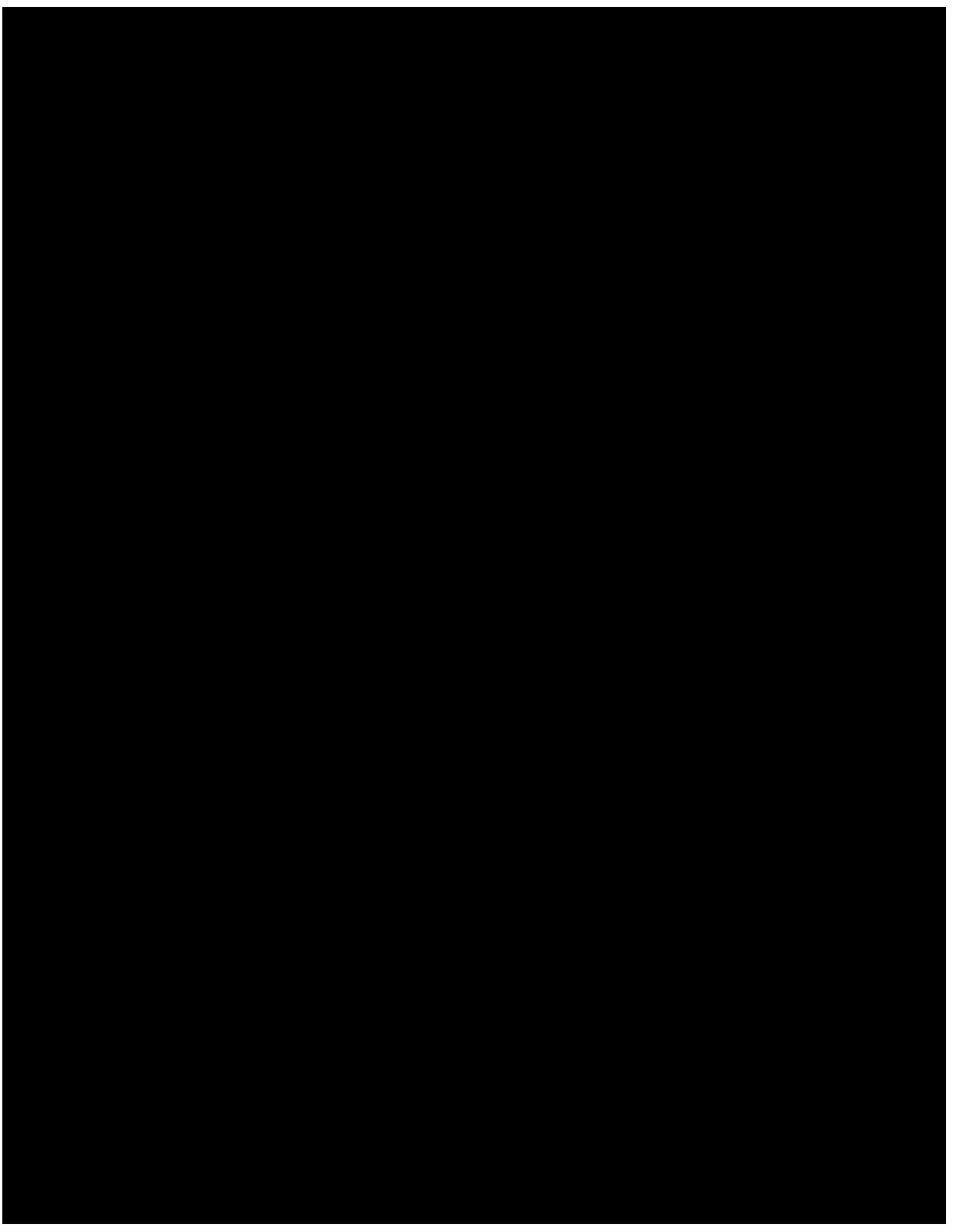


The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity. The document also highlights the need for regular reconciliation of accounts to identify any discrepancies early on.

Next, the document covers the various methods used to record transactions. It explains the difference between debit and credit entries and how they affect the accounting equation. It also discusses the use of journals and ledgers to organize and summarize the data. The document provides examples of how to record a sale on credit, a purchase on credit, and a cash sale, showing the corresponding debit and credit entries.

The document then moves on to discuss the process of closing the books at the end of an accounting period. It explains how to calculate the net income or loss and how to transfer these amounts to the retained earnings account. It also discusses the importance of preparing a balance sheet and an income statement to provide a clear picture of the company's financial position and performance.

Finally, the document concludes by emphasizing the importance of honesty and accuracy in accounting. It states that the primary goal of accounting is to provide reliable information to management and other stakeholders. It encourages accountants to adhere to ethical standards and to always double-check their work to ensure that the financial statements are free from errors and misstatements.



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The second part of the document focuses on budgeting and financial planning. It explains how to create a realistic budget based on your income and expenses, and how to adjust it as your needs change. The document offers practical tips on how to save money, such as negotiating with suppliers, taking advantage of discounts, and reducing unnecessary costs. It also discusses the importance of setting financial goals and monitoring progress towards them. The document concludes with a summary of key points and a list of resources for further information.

