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FINANCE AND ADMINISTRATION CABINET
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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc

Contact: [REDACTED], Inc

Attn: [REDACTED]

FINAL RULING NO. 2010-33
May 14, 2010

Sales Tax refund denial
for the period December 1, 1999 through June 30, 2003

FINAL RULING

The Kentucky Department of Revenue has denied a sales tax refund request or claim submitted by [REDACTED], Inc. in the amount of \$ [REDACTED], plus applicable interest, as depicted in the chart below:

Refund Period	Tax	Interest as of 05/14/2010	Total per Period
12/01/1999 06/30/2003	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] is a retailer of [REDACTED] and other merchandise that operates retail stores in Kentucky and holds a Kentucky seller's permit. See generally 139.200; 139.240; 139.250.

[REDACTED]'s refund claim is based upon KRS 139.350, which during the refund period, stated as follows:

A retailer is relieved from liability to collect use tax which shall become due and payable subsequent to June 30, 1960, insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the retailer has previously paid the amount of the tax, he may, under rules and regulations prescribed by the cabinet, take as a deduction the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

██████████'s refund claim seeks the recovery of sales tax it collected on Kentucky retail sales made on credit through the use of ██████████ credit cards. Based upon ██████████'s protest, supporting statement and other representations, the facts appear to be as follows: ██████████ entered into an arrangement with ██████████ Bank of ██████████ ("██████████"), a subsidiary of ██████████, whereby ██████████ issued prospective ██████████ customers what are apparently referred to as private label ██████████ credit cards. When one of these private label credit card sales took place, ██████████ paid ██████████ an agreed upon amount consisting of or including the price paid by the customer for the good purchased, the applicable sales tax, and an amount for future interest payments ██████████ anticipated receiving from the customer over time, less an amount referred to by ██████████ as an uncollectible account fee. ██████████ would report this sale on its Kentucky sales tax return and remit the tax due on this sale with that return. See generally KRS 139.540; 139.550; 139.580.

██████████ would thereafter collect the amount due from the ██████████ customer/cardholder on this private label credit card sale. If the customer defaulted, ██████████ would take whatever action was appropriate, including legal action, to collect the unpaid balance. Once ██████████ determined that it would be unable to collect the unpaid balance on this private label credit card account, it would charge the account off as worthless and deduct it as a bad debt for federal income tax purposes.

██████████ contends that KRS 139.350 does not require that the worthless account be charged off by the retailer that previously remitted the tax; only that it has been charged off for income tax purposes. This is an erroneous reading of KRS 139.350. Under this statute, a bad debt deduction is available only to a retailer that has both remitted the tax to the Department itself and charged off the account as worthless on its own income tax return. This understanding of the statute is readily apparent from its last sentence, which states that "[i]f any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return."

██████████ has not met its burden of proving that all of the requirements of KRS 139.350 have been met and that it is entitled to the deduction that statute authorizes. See, e.g., Tennessee Gas

& Transmission Co. v. Commonwealth, 308 Ky. 571, 215 S.W.2d 102, 105 (1948); Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989). Accordingly, it did not overpay its taxes during or for the refund period and is not entitled to the refund it seeks pursuant to KRS 134.580 and 139.770.

Based upon the foregoing, the Department properly denied ██████'s sales tax refund of \$ ██████ and ██████'s protest of that denial is hereby disallowed.

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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and

[REDACTED], Inc.

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4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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



E. Jeffrey Mosley

Interim Executive Director

Office of Legal Services for Revenue

cc:

[REDACTED]
LLP

[REDACTED]
LLP