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JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

████████████████████ INC.

Contact: ██████████ President
████████████████████ Inc.

FINAL RULING NO. 2010-66
October 4, 2010

Sales and Use Tax assessment for the period
April 1, 1999 through March 31, 2003

FINAL RULING

The Kentucky Department of Revenue ("the Department") has an outstanding sales and use tax assessment against ██████████, Inc. ("████████") for the audit period April 1, 1999 through March 31, 2003. The following schedule reflects the amounts due for this period.

Tax Period	Tax	Interest as of 10/4/2010	Totals
04/01/99 – 12/31/99	\$ ██████████	\$ ██████████	\$ ██████████
01/01/00 – 12/31/00	\$ ██████████	\$ ██████████	\$ ██████████
01/01/01 – 11/30/01	\$ ██████████	\$ ██████████	\$ ██████████
12/01/01 – 12/31/01	\$ ██████████	\$ ██████████	\$ ██████████
01/01/02 – 12/31/02	\$ ██████████	\$ ██████████	\$ ██████████
01/01/03 – 03/31/03	\$ ██████████	\$ ██████████	\$ ██████████
TOTAL	\$ ██████████	\$ ██████████	\$ ██████████

████████ protested its assessment in accordance with KRS 131.110 and provided information or documentation that permitted some adjustments or reductions to the original assessment. The foregoing schedule incorporates these adjustments and shows the total amount now due. As we shall see below, no further adjustments or reductions in this assessment are warranted.

██████████ operates as a landscaper/retailer/nurseryman. It sells trees, plants, vegetables, and landscaping materials at ██████ retail locations, a permanent one in ██████, Kentucky and a temporary one during the spring and summer in ██████. It grows some of the vegetables and plants on its own farmland and seedling plants are started in its greenhouses. Additionally, a large part of its business is composed of landscape work and lawn services.

The assessment is based upon the following determinations of the Department's audit of ██████: 1) ██████ improperly or erroneously took deductions from, or claimed exemptions for, taxable gross receipts on its sales tax returns; 2) ██████ failed to report taxable retail sales on its sales tax returns; and 3) ██████ failed to pay sales or use tax for its purchases of tangible personal property used in its business (i.e., consumable supplies and capital assets).

All sales of tangible personal property are subject to tax unless the taxpayer can prove otherwise. KRS 139.260. The burden rests squarely upon the taxpayer to establish that an exemption from taxation applies and that all of that exemption's requirements are satisfied in the case of the sale or purchase in question. See, e.g., Popplewell's Alligator Dock No. 1 v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky. 2004); Epsilon Trading Co. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989). The Department's assessment is presumed valid and correct and the taxpayer bears the burden of proving otherwise. Hahn v. Allphin, 282 S.W.2d 824, 825 (Ky. 1955).

The principles just stated are reflected in the law governing protests of tax assessments, KRS 131.110, which places an obligation upon a taxpayer to submit a supporting statement as part of its protest. This supporting statement must be "something more than mere denials of tax liability." Eagle Machine Co. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky. App. 1985). To satisfy this supporting statement requirement, "a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

██████████'s protest has been pending since ██████, 2004. ██████ has been given ample opportunity to provide documentation that would substantiate its positions in this matter. It has been granted several extensions to submit information or documentation requested by the Department. A conference pursuant to KRS 131.110(2) was ultimately held on ██████, 2008 and a second conference was held on ██████, 2009. Further documentation was received, which resulted in additional adjustments or reductions in the original assessment to the amount now shown in the schedule above.

As indicated above, ██████ has not provided any documentation or information sufficient to warrant the setting aside of the amount of the assessment still outstanding, which is shown in the schedule above. On ██████, 2009, it requested yet another extension of time for the submission of information. ██████ has not provided any more information to the Department, however, since that time.

It is the Department's position that ██████ has not provided sufficient documentation to substantiate its protest. It has not established that the sales or purchases still in question were exempt from or not subject to sales and use tax.

Based upon the foregoing, and after considering the information that has been presented by ██████, ██████, Inc. in its protest and supporting statement and at the conference held pursuant to KRS 131.110, the tax assessment totaling \$██████ (plus applicable interest) is hereby determined by the Department of Revenue to be correct and a legitimate liability 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 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
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

