



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
501 HIGH STREET  
FRANKFORT, KENTUCKY 40601  
Phone (502) 564-3226  
Fax (502) 564-3875  
www.kentucky.gov

JONATHAN MILLER  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] LLC

Contact:

[REDACTED], LLC

FINAL RULING NO. 2010-82  
November 22, 2010

### FINAL RULING

The Kentucky Department of Revenue ("DOR") currently has an outstanding sales and use tax assessment against [REDACTED], LLC ("[REDACTED]") totaling \$[REDACTED] plus interest and penalty for the period March 1, 2006 through September 30, 2009. A breakdown of the outstanding amount of the assessment still due is shown in the chart below:

Period	Tax	Interest as of 11/22/10	Penalty	Total per Period
3/1/06 – 12/31/06	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
1/1/07 – 12/31/07	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
1/1/08 – 12/31/08	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
1/1/09 – 9/30/09	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
<b>TOTAL</b>	<b>\$[REDACTED]</b>	<b>\$[REDACTED]</b>	<b>\$[REDACTED]</b>	<b>\$[REDACTED]</b>

[REDACTED] is a farm equipment dealer for several manufacturers. It operates [REDACTED] farm equipment store with a service department.

At issue are unallowable deductions for retail sales. [REDACTED] took deductions for sales on which it did not have valid exemption certificates. Though not specifically protested, capital and consumable supplies purchases also remain in the unpaid assessment.

The assessment is based upon the following determinations of the Department's audit of ██████████: 1) ██████████ improperly took farm exemption deductions 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).

KRS 139.260 states:

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 KRS 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 provisions of KRS 139.270;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Department of Revenue governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS 139.776 or 139.777.

The principles stated above 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.

██████████ 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.

██████████ did provide a limited number of exemption certificates that were sufficient to remove numerous items from the assessment. For those items remaining, as indicated above, ██████████ has not provided any documentation or information sufficient to warrant the setting aside of the amount of the assessment still outstanding.

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.

Penalties have been assessed pursuant to KRS 131.180(2) because of ██████████’s failure to timely pay at least 75% of the tax determined to be due by the Department. ██████████ has not shown that the penalties were erroneously applied and it has failed to demonstrate that the failures triggering the penalties’ imposition was due to reasonable cause.

For the reasons stated above, the outstanding liability totaling \$██████████ set forth above is a legitimate liability of ██████████ LLC due to 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 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,



E. Jeffrey Mosley  
Interim Executive Director  
Office of Legal Services for Revenue