



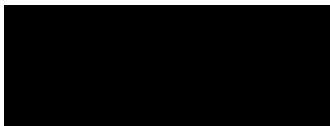
STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
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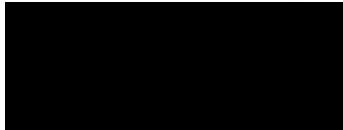
LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:



Contact:



FINAL RULING NO. 2013-20  
March 22, 2013

Sales and Use Tax Assessments for the Periods Ending  
12/31/2009 and 6/30/2010 – 3/31/2011

### FINAL RULING

The Kentucky Department of Revenue (the "Department") has outstanding tax assessments against [REDACTED] LLC. [REDACTED] LLC was formed in 2007. From the point of its formation through all period relevant, it had three members, one of which was [REDACTED]. When its Articles of Organization were filed with the Kentucky Secretary of State's Office, [REDACTED] was listed as the initial registered agent, and he signed the Articles as an Organizer.

The Operating Agreement of [REDACTED] was designated a "Partnership Agreement" and stated that [REDACTED] and one other partner had the responsibility to "Overseas [sic] the accounting and coordinate all the necessary legal documents." The third "partner," designated "Partner C" was stated to have the following responsibilities:

- a. Attend and perform all managing duties with a minimum of five days a week with no less than 50 hours a week
- b. Provide and hire all labor and sales personnel required to perform required sales and managerial jobs, unless natural disaster or weather not permitting

- c. Take no more than two weeks paid vacation per year during slow season or until business revenue and employees coverage permit.
- d. Manage all daily business activity including, but not limited to marketing, sales, daily check on existing jobs.

The Partnership Agreement specified that losses of the Partnership were to be "paid out of the capital of the partnership or the profits arising from the partnership business, or, if both shall be deficient, by the partners on a pro rata basis, in proportion to their original contributions . . . ." The Partnership Agreement further provided that, "[E]ach partner shall have free access at all times to all books and records maintained relative to the partnership business," and it also stated that there was to be general accounting of the business of the partnership on [REDACTED] of each year, and that each partner was to sign the account books after the accounting was completed and keep a copy for his or herself.

[REDACTED] LLC failed to pay its sales and use taxes for the period ending December 31, 2009. Although it paid its sales and use taxes for the period ending 3/31/2010, it again failed to pay them for the period ending 6/30/2010 and this nonpayment continued through the period ending 3/31/2011. The Department assessed [REDACTED] personally for the outstanding liabilities of [REDACTED] on [REDACTED], 2011. Currently, the outstanding liabilities of [REDACTED] LLC for which [REDACTED] has been assessed are as follows:

#### SALES AND USE TAX

Period	Tax	Interest as of March , 2013	Fees	Penalty	Total
December 31, 2009 and June 30, 2010 through March 31, 2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

With regard to the sales and use tax, KRS 139.185(2) provides that "the managers of a limited liability company, . . . or any other person holding any equivalent office of a limited liability company, . . . shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter." It further states that, "Dissolution, withdrawal of the limited liability company, limited liability partnership, or limited liability limited partnership from the state, or the cessation of holding any office shall not discharge the liability of any person" for any unpaid sales and use tax. KRS 139.185(2) also provides that "[n]o person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due."

Under the Operating Agreement/Partnership Agreement that governed [REDACTED], [REDACTED]'s position was equivalent that of a limited liability company manager and he clearly had the authority to truthfully account for the tax imposed by KRS chapter 139. He claims that the sales taxes collected by [REDACTED] were handled by the person the Partnership Agreement designated as "Partner C," and that it was her fault that the taxes were not paid to the Department. However, the Partnership Agreement explicitly gave him the authority to oversee the accounting of the company, and it gave him the access to the books of the company necessary to do that. The Partnership Agreement also required an accounting of the company's business to occur on [REDACTED] 2010, and had [REDACTED] seen to it that that was completed, it would have

best, [REDACTED]'s argument amounts to claiming that Kentucky's taxpayers should bear the loss of the tax revenue that would have been paid to the Department had it not been for his own malfeasance and inattentiveness. In addition, to the extent that the sales taxes collected by [REDACTED] were diverted to cover other expenses of the business, [REDACTED] seeks to shift the losses he originally agreed to bear onto the State of Kentucky.

Based upon the foregoing, and after considering the information presented by [REDACTED], it is held that the amounts assessed upon [REDACTED] are determined by the Department of Revenue to be correct and legitimate liabilities 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.

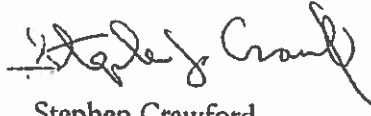
Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation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

DEPARTMENT OF REVENUE

A handwritten signature in black ink, appearing to read "Stephen Crawford", written over a horizontal line.

Stephen Crawford  
Assistant General Counsel

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

CC:

