



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:

[REDACTED], INC.

Contact:

[REDACTED] Inc.
[REDACTED]

FINAL RULING NO. 2013-66
December 11, 2013

Sales and Use Tax Refund Denial
for the period May 1, 2007 through March 31, 2010

FINAL RULING

REFUND CLAIM DENIED			
Period	Tax	Interest as of 12/11/13	Totals
5/1/07 – 3/31/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Kentucky Department of Revenue ("Department") has denied a refund claim submitted by [REDACTED], Inc. ("[REDACTED]"). The amount of the refund claim and the period to which it relates are set forth above. The Department's denial of the refund claim has been protested in accordance with KRS 134.580(3) and 103 KAR 1:010.

[REDACTED] manages an award program called [REDACTED]'s which is designed to enhance employee performance and loyalty by allowing its corporate clients to issue points to their employee participants which are redeemable for merchandise. [REDACTED] charges its clients a per point fee for the points earned by participants, and deposits these points into each participant's account.

Once the points are in a participant's account, the participant can redeem the points for merchandise chosen out of an online rewards catalog. ██████ purchases all of its merchandise with a resale certificate. The participant's account is reduced by the amount of any merchandise redemptions that occur.

█████ originally reported sales/use tax for the period May 1, 2007-March 31, 2010 based upon the redeemed points value (retails sales value) of its merchandise. However, ██████ now contends that it is entitled to a refund because it should have only accrued sales/use tax on the actual cost of its merchandise.

KRS 139.010(12)(a) defines "gross receipts" and "sales price" as "the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, digital property, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following . . ."

In support of its protest, ██████ asserts that the merchandise redeemed with the points is a gift without consideration which should not be included in gross receipts or sales price. However, the merchandise in ██████'s inventory is not given away free to the participants.

Instead, the participant must use or spend points to receive the merchandise. Upon use, these points are subtracted from the participant's point balance. Accordingly, the points the participant uses or redeems constitute consideration for the transfer of the merchandise to the participant. The sales price for each item of merchandise is equal to the per-point fee paid by the participant's employer multiplied by the number of points redeemed by the participant to obtain the item.

Based on the above, the refund claim totaling \$ ██████, plus applicable interest, was properly denied by the Department.

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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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

Laura M. Ferguson
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc:

[REDACTED]
[REDACTED] LLP
[REDACTED]