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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2014-13
March 27, 2014

Denial of Sales and Use Tax Refund Claim
for the Period September 1, 2009 through November 30, 2012

FINAL RULING

[REDACTED] (" [REDACTED] ") has protested the denial of its refund claim by the Department of Revenue ("the Department") for the period September 1, 2009 through November 30, 2012. The amount of the refund claim, with interest calculated through the date of this final ruling, is set forth in the table below. For the reasons that follow, the Department has properly denied this refund claim.

Period	Tax	Interest As of 3/27/14	Total Refund
09/01/09 - 11/30/12	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED] makes retail sales of ATV's, motorcycles, scooters and sports utility vehicles in [REDACTED], KY.

The Department conducted an audit of [REDACTED] sales and use tax returns for the period September 1, 2009 through November 30, 2012. This audit resulted in the Department's issuance of an assessment to [REDACTED] in the amount of \$ [REDACTED] in tax, plus applicable interest. After [REDACTED] provided additional detail regarding the deduction claims, the Department made adjustments to the assessment. [REDACTED] then paid the adjusted assessment in full, and protested requesting a refund in the amount of \$ [REDACTED]. Following a protest conference in which [REDACTED] provided detailed explanations regarding the deductions claimed for filing fees, the Department issued a partial refund of \$ [REDACTED].

The remaining balance of the refund relates to documentation fees which [REDACTED] collected from its customers when selling the vehicles. [REDACTED] charges its customers these documentation fees for the labor involved in preparing paperwork.

At issue are the following:

1. Whether documentation fees constitute gross receipts subject to sales tax, and
2. Whether [REDACTED] is liable for the tax assessed for the periods at issue.

KRS 139.010 (12) states in part:

- (a) "Gross receipts" and "sales price" mean 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:
 1. The retailer's cost of the tangible personal property or digital property sold;
 2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
 3. Charges by the retailer for any services necessary to complete the sale;
 4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
 5. Any amount for which credit is given to the purchaser by the retailer, other than credit for tangible personal property or digital property traded when the tangible personal property or digital property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale

Regarding the first issue, it is clear that the documentation fees are other expenses of the retailer and/or charges by the retailer for services necessary to complete the sale. Consequently, the documentation fees are gross receipts subject to sales tax.

Regarding the second issue, [REDACTED] contends that it is not liable for the tax since the company was not notified in prior audits that it was liable for tax on any charges it passed on and collected from customers in the form of documentation fees. However, the fact that the fees were

not taxed in a previous audit does not provide grounds to ignore the taxability of the fees at this point. See Revenue Cabinet v. Lazarus, Inc., 49 S.W.3d 172, 175 (Ky. 2001). Based upon the provisions of KRS 139.010(12)(a) cited herein, the fees are clearly taxable.

For the reasons stated above, [REDACTED] refund claim of \$ [REDACTED], plus applicable interest, was properly denied by the Department of Revenue.

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



Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[REDACTED]

