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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ INC.

Contact: ██████████

FINAL RULING NO. 2014-17
May 15, 2014

Sales and Use Tax Assessment for Audit Period
January 1, 2008 through December 31, 2011

FINAL RULING

The Department of Revenue ("the DOR") has a sales and use tax assessment against ██████████ Inc. ("██████████") for the audit period January 1, 2008 through December 31, 2011. The following schedule reflects the outstanding liability for this period:

| Period | Net Tax Due | Interest as of 5/15/14 | Penalty | Total due per period |
|-----------------|---------------|---------------------------|---------------|-------------------------|
| 1/1/09-12/31/09 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| 1/1/10-12/31/10 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| 1/1/11-12/31/11 | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |
| TOTALS | \$ ██████████ | \$ ██████████ | \$ ██████████ | \$ ██████████ |

During the audit period, ██████████ operated as a construction/marine contractor for various commercial and residential customers.

As a result of the sales and use tax audit, ██████████ was issued an assessment in the amount of \$ ██████████. ██████████ timely protested the assessment and provided adequate documentation to reduce the assessment to the amount reflected in the schedule above.

At issue is:

1. Whether certain purchases of tangible personal property made by ██████████ at issue qualify for the exemption provided for in KRS 139.483.
2. Whether the taxpayer has established that tax was in fact paid for the other purchases for which tax has been assessed.

██████████ contends in its ██████████ 2012 protest that certain of the purchases of tangible personal property for which tax was assessed were not subject to tax because the items “were used on the river.” Presumably, ██████████ seeks to invoke the exemption from sales and use tax set forth in KRS 139.483, which states:

The taxes imposed under the provisions of this chapter shall not apply to the sale of, or the storage, use or other consumption of, ships and vessels, including property used in the repair and construction of, supplies and fuel consumed in the operation of, and supplies consumed by crew members aboard such ships and vessels which are used principally in the transportation of property or in the conveyance of persons for hire.

Emphasis added

The burden of proving that an exemption from taxation applies and that all applicable statutory requirements are met rests squarely on ██████████ KRS 139.260: Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989). ██████████ has not carried its burden of proof with respect to these purchases. Indeed, its protest acknowledges that the items in question consisted of “improvements on various watercraft used in a construction job on the ██████████” These watercraft or vessels were therefore not used principally in the transportation of property or in the conveyance of persons for hire, rendering KRS 139.483 inapplicable.

Insofar as the second issue stated above is concerned, ██████████ has provided no evidence or no persuasive argument that sales and use tax was in fact paid on the other purchases for which tax has been assessed. The assessment issued by DOR to ██████████ is presumed correct, with the burden resting on ██████████ to prove otherwise. Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955). ██████████ has not provided the DOR with evidence that would suffice to meet this burden.

A penalty has been assessed pursuant to KRS 131.180(2) because of ██████████'s failure to have timely paid at least 75% of the tax determined to be due by the DOR. ██████████ has provided nothing that would indicate that this penalty was erroneously assessed or applied or that it should be waived or abated.

Based on the above, the outstanding sales and use tax assessment totaling \$██████████ (plus applicable interest and penalty) is a legitimate liability of ██████████ Inc. 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 Boards 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. Any 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. Any 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.

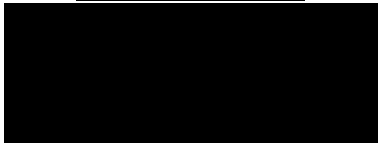
Sincerely,
FINANCE AND ADMINISTRATION CABINET

Laura M. Ferguson

Attorney Manager
Office of Legal Services for Revenue

cc: ██████████, Certified Public Accountants

Attn: ██████████ CPA



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