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Governor

FINANCE AND ADMINISTRATION CABINET
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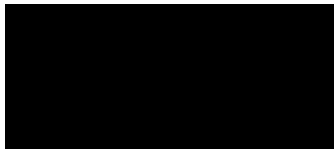
LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████ INC

Contact:



FINAL RULING NO. 2014-22
May 28, 2014

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

FINAL RULING

The Kentucky Department of Revenue ("DOR") has outstanding sales and use tax assessments against ██████████ Inc. ("██████████") for the periods October 1, 2008 through December 31, 2011. The following schedule reflects ██████████'s underpayments of sales and use tax for this period represented by the assessments, as well as penalties and applicable interest accrued to May 28, 2014:

Period	Net Tax Due	Interest as of 5/28/14	Penalty	Total Per Period
10/01/08-12/31/08	██████████	██████████	██████████	██████████
01/01/09-12/31/09	██████████	██████████	██████████	██████████
01/01/10-12/31/10	██████████	██████████	██████████	██████████
01/01/11-09/30/11	██████████	██████████	██████████	██████████
10/01/11-12/31/11	██████████	██████████	██████████	██████████
TOTALS	██████████	██████████	██████████	██████████

██████████ is a producer of concrete. During the periods reflected in the above schedule, ██████████ operated as a retailer/manufacturer of products including ready mix concrete, septic tanks and various other items of tangible personal property.

As a result of the sales and use tax audit, DOR issued ██████████ assessments totaling \$██████████ in tax, plus applicable penalties and interest. ██████████ protested the assessments and remitted a payment of \$██████████ for the uncontested portion of those assessments. ██████████ submitted sufficient documentation to allow DOR to make limited adjustments to the assessments. The schedule above reflects the sales and use tax liability that remains after these adjustments and the earlier payment of the uncontested portion of the assessments.

██████████ has failed to provide any documentation or any persuasive documentation that would warrant further reductions. The DOR's assessments are presumed valid and correct, with the burden resting upon the taxpayer, in this case ██████████, to prove otherwise. Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955). Furthermore, its gross receipts are presumed to be taxable and the burden of proof rests upon ██████████ to prove that an exemption applies and all applicable statutory requirements are satisfied. Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 037 (Ky. App. 1989); KRS 139.260.

██████████ has not met its burden of proof in this matter. For example, a portion of the assessments is attributable to the Department's disallowance of deductions ██████████ took on its sales and use tax returns for sales it contends were made for resale. It has failed to provide properly completed resale certificates or other information that would establish that these deductions were proper. It has failed to substantiate its claims that tax assessed on certain of its purchases were in fact paid and should be removed from the outstanding assessments or that other purchases were exempt from tax. With respect to these and other transactions for which tax remains assessed, ██████████ has not provided any information that would warrant setting aside the assessment of tax for that transaction or the information it has provided is incomplete or unpersuasive.

Penalties have 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 for the periods reflected in the schedule above. ██████████ has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$██████████ (plus applicable penalty and interest) 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 Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 803 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 Chapters 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.

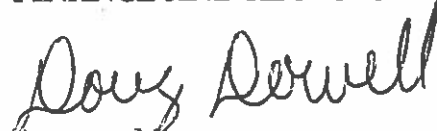
[REDACTED], Inc.

May 28, 2014 – Final Ruling No. 2014-22

Page 4

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

cc:

[REDACTED] CPA
[REDACTED]

