



As a result of the sales and use tax audit, DOR issued ██████████ an assessment in the amount of \$ ██████████ in tax, plus applicable penalties, fees and interest. In addition to online sales, the assessment was based on expenses claimed with ██████████ filing of Schedule C returns along with the individual income tax returns for 2009-2012. According to the provisions of KRS 139.720, ██████████ is required to maintain business records regarding purchases and sales substantiating that the appropriate sales and use tax has been paid.

██████████ timely protested but did not provide any documentation of Kentucky sales and use tax paid to support its protest. A review of the Schedule C returns showed several items in the audit were eligible for adjustment. Those items were removed from the audit and the total due shown above is the total due after removal of those items.

At issue is:

- (1) Whether ██████████ paid sales and use tax on repairs and maintenance at the time of service;
- (2) Whether ██████████ paid sales and use tax on the rental of tangible personal property;
- (3) Whether ██████████ paid sales and use tax at the time of purchase of consumable supplies; and
- (4) Whether ██████████ is liable for sales tax on sales of tangible personal property it claims to have sold on the internet for friends and family.

By letters dated ██████████, 2015, ██████████, 2015 and ██████████, 2015, DOR requested the supporting documentation substantiating ██████████ claims. ██████████ has not submitted the supporting documentation requested and has failed to respond in any manner.

██████████ has provided no evidence or no persuasive argument that supports the issues raised by ██████████ in its timely protest letter. 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.

██████████ has been assessed amnesty fees pursuant to the Kentucky Tax Amnesty Act, KRS 131.400 to 445. Pursuant to KRS 131.440(1)(b)1.b., taxes assessed and collected after the amnesty period (i.e., October 1 through November 30, 2012) for taxable periods ending or transactions occurring prior to October 1, 2011, shall be charged a cost of collection fee of 25% at the time of the assessment. As the above schedule shows, the taxes to which these fees apply were assessed for periods ending or transactions occurring prior to October 1, 2011.

██████████, Inc.

DBA ██████████

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Penalties have been assessed pursuant to KRS 131.180(2) because of ██████████ 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 the penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$ ██████████ (plus applicable penalties, fees and interest) is a legitimate liability of ██████████, Inc DBA ██████████ 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 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, KY 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 (the "Board") 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 appeal 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;

[REDACTED], Inc.

DBA [REDACTED]

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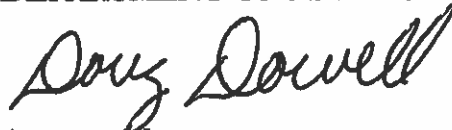
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3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, 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 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



Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED