



provided supporting documentation that warranted a reduction to the original assessment. The Consumable Supplies/Inventory Withdrawals and the Capital amounts remaining in the audit were not protested and have not been paid. The following issues remain.

At issue is:

1. Whether certain transactions picked up as Unallowable Deductions should be removed from the audit assessment as sales in interstate commerce.
2. Whether the transaction picked up as an Unallowable Deduction should be removed from the audit assessment as a sale for resale.

On Issue 1, ██████████ contends that the sales picked up on the Unallowable Deductions Schedule should be removed as sales in interstate commerce. It contends that the purchaser did not take physical possession of the merchandise in Kentucky and the items were sold and delivered to out-of-state residents. ██████████ also contends that it was relying on advice from DOR that it was not required to maintain documentation to verify out-of-state sales and delivery.

The DOR contends that according to the relevant invoices, the sales took place in Kentucky; therefore the sales are considered Kentucky sales, and in the absence of any valid exemption, subject to Kentucky sales tax.

On Issue 2, ██████████ contends that sales to ██████████ totaling \$ ██████████ also had a sales and use tax certificate of which a copy was provided. However, the resale certificate was not fully completed as required. DOR repeatedly asked for ██████████ to provide a properly completed resale certificate from ██████████.

██████████ stated in letters dated ██████████, 2014 and ██████████, 2015 that it had not been able to contact the owner of ██████████ to secure a properly completed resale certificate. Subsequent letters to ██████████ dated ██████████, 2015, ██████████, 2015 and ██████████, 2015 requesting the properly completed resale certificate had no response.

██████████ has failed to provide any documentation or any persuasive arguments 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. ██████████ has failed to provide a properly completed resale certificate or other information that would establish that these deductions were proper. 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.

██████████ has been assessed amnesty fees pursuant to the Kentucky Tax Amnesty Act, KRS 131.400 to 131.445. Pursuant to KRS 131.440(1)(b)1.b., taxes assessed and collected after the amnesty period (i.e. October 1, 2012 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.

For the reasons stated above, the outstanding sales and use tax assessment totaling \$██████████ (plus applicable fees and interest) is a legitimate liability of ██████████ LLC 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, 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 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