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WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

[redacted], INC.

Contact: [redacted]

FINAL RULING NO. 2016-27
July 27, 2016

Sales and Use Tax Assessment
November 1, 2012 through October 31, 2013

FINAL RULING

The Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [redacted], Inc. ("[redacted]") for the audit period November 1, 2012 through October 31, 2013. The following schedule reflects the total liability for this case:

Period	Tax	Interest as of TBD	Penalty	Total per period
11/01/2012 – 10/31/2013	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Totals	$[redacted]	$[redacted]	$[redacted]	$[redacted]

[redacted] is a manufacturer of equipment used to screen, separate, dry, cool, blend, and perform various other processing functions. [redacted] specifically specializes in manufacturing vibrating conveyors, feeders, screeners, fluid bed dryers, fluid bed coolers, [redacted], flash dryers, media slurry dryers, and vibrating spiral elevators. [redacted] also manufactures and sells repair and replacement parts related to the equipment it manufactures.

[redacted] was audited for the period January 1, 2011 to December 31, 2014 and assessed additional tax of $[redacted]. [redacted] timely protested the assessment on [redacted], 2015 and remitted a payment of $[redacted] representing the tax, interest, and penalty it conceded it owed. Adjustments made to the audit subsequent to the review of the documentation submitted reduced the assessment to the remaining liability depicted above.

Regarding the disputed tax, [redacted] invoiced and remitted sales tax on a [redacted] 2011 sale to a particular customer. The customer never paid [redacted] the tax and claims to have self accrued and remitted the tax to Kentucky. [redacted] subsequently took deductions on its [redacted] 2013 through [redacted] 2013 sales and use tax returns to recover the tax. However, DOR records provide no indication of payment of the tax to Kentucky.

By letters dated [redacted], 2016; [redacted], 2016; [redacted], 2016; and [redacted], 2016 DOR requested that [redacted] provide documentation to support the items still under protest that were not subject to Kentucky sales tax.

KRS 139.260 states,

> For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property and digital property sold by any person for delivery or access in this state are subject to the tax until the contrary is established. <u>The burden of proving the contrary is upon the person who makes the sale unless the person takes from the purchaser a certificate to the effect that the property is either:</u>
> (1) Purchased for resale according to the provisions of KRS 139.270;
> (2) Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or
> (3) Purchased according to administrative regulations promulgated by the department governing a direct pay authorization.
>
> (Emphasis)

[redacted] has failed to provide any 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 [redacted], to prove otherwise <u>Hahn v. Allphin</u>, 282 S.W.2d 824 (Ky. 1955). Furthermore, its gross receipts are presumed to be taxable and the burden of proof rests upon [redacted] 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.

[redacted] 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 [redacted] took on its sales and use tax returns for sales it contends were made for resale and for sales on which its customer self assessed use tax. It has failed to provide properly completed resale certificates or other information that would establish that these deductions were proper. [redacted] has not provided any information that would warrant setting aside the assessment.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because of [redacted]'s failure to have timely paid at least 75% of the tax determined to be due by the DOR. [redacted] 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 $[redacted] (plus applicable penalty and interest) is deemed the legitimate liability of [redacted], 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 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 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;
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

Doug Dowell

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED