



**MATTHEW G. BEVIN**  
Governor

**FINANCE AND ADMINISTRATION CABINET**  
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**WILLIAM M. LANDRUM III**  
Secretary

**DANIEL P. BORK**  
Commissioner

In the matter of:

██████████ CORPORATION

Contact: ██████████

FINAL RULING NO. 2016-39  
September 28, 2016

Sales and Use Tax  
January 1, 2010 to December 31, 2013

### FINAL RULING

The Kentucky Department of Revenue ("DOR") has outstanding sales and use tax assessments against ██████████ Corporation ("██████████") for the periods January 1, 2010 through December 31, 2013. The following schedule reflects ██████████'s underpayments of sales and use tax for this period represented by the assessments, as well as applicable interest, penalties and fees accrued to September 28, 2016:

| Period              | Net Tax Due | Interest as of 9/28/16 | Penalty    | Fees       | Total due per period |
|---------------------|-------------|------------------------|------------|------------|----------------------|
| 01/01/10 - 12/31/10 | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |
| 01/01/11 - 09/30/11 | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |
| 10/01/11 - 12/31/11 | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |
| 01/01/12 - 12/31/12 | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |
| 01/01/13 - 12/31/13 | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |
| <b>TOTALS</b>       | ██████████  | ██████████             | ██████████ | ██████████ | ██████████           |

During the audit period, ██████████ operated as a convenience store and as a retailer of food products, tobacco, alcohol and many other non-food items.

As a result of the sales and use tax audit, DOR issued ██████████ an assessment totaling \$██████████ in tax plus applicable interest. ██████████ timely protested the assessment asserting that the test year used to determine the assessment was not representative of preceding and succeeding years.

By letters dated ██████████, 2016, ██████████ 2016 and ██████████, 2016 to ██████████, DOR requested supporting documentation. To date no response has been received.

At issue is whether ██████████ has complied with the requirements of KRS 131.110(1) which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the Department may extend the time for filing the supporting statement if it appears the delay is unnecessary and unavoidable.

The Kentucky courts have held this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the DOR with “something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky. App. 1985). In order to make a valid protest, a taxpayer must provide financial statements, records or some other documentation that would allow the Department of Revenue some basis for reconsideration.

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in a taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky. App. 1989). In both Scotty’s Construction and Eagle Machine, the taxpayer failed to provide appropriate documentation in support of their denials of tax liability, despite being given ample opportunity to do so. The same is true in this matter.

██████████ 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.

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 applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$████████ (plus applicable penalty, interest and fees) is a legitimate liability of ██████ Corporation due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

### **APPEAL**

For purposes of this final ruling, the terminology “Kentucky Board of Tax Appeals” and “Board” represent both the current Kentucky Board of Appeals, as well as, the Kentucky Claims Commission that was established by Executive Order on August 8, 2016 and is expected to replace the current Kentucky Board of Tax Appeals on October 1, 2016.

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 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 he complies with Rule 3.032(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

cc:

████████████████████  
Attn: ████████████████████, Accountant  
████████████████████

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED