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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2006-37
April 26, 2006

Tangible Property Tax Assessments
January 1, 2001 through January 1, 2004

FINAL RULING

The Kentucky Department of Revenue has outstanding tangible personal property tax assessments against [REDACTED] (Taxpayer) for the periods January 1, 2001 through January 1, 2004 totaling \$ [REDACTED], plus applicable interest and penalties. A breakdown of the assessments are shown in the chart below:

Tax Year	Tax Due	Interest As of 5/12/2006	Penalty As of 5/12/2006	Total Due As of 5/12/2006
2001	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2003	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2004	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Totals	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] protested the reclassification of assets from Class III property to Class V property for the [REDACTED] and [REDACTED] locations. The equipment is grouped together in one lump sum on the property list of the audit working papers for each location. This is due to the taxpayer's records as reflected by the CPA statement in the [REDACTED] [REDACTED], 2006 protest letter, "When a store is purchased from another owner, a lump sum is stated

for equipment based on contents and appraisal.” The CPA provided a listing of the assets included in the lump sum amount for each location with the [REDACTED], 2006 protest letter. However, there was no cost amount assigned to the assets on the list. Since the list included both Class III and Class V property, it was impossible to verify how much of each lump sum amount should be reclassified as Class III property. After speaking with one of the shareholders on the phone, it was determined that he could get the original cost amounts of the assets and send it to me. To date, no documentation has been received. Therefore, no adjustments have been made to the audit working papers, and the lump sum amounts are still classified as Class V property.

At issue is whether [REDACTED] 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 cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with “something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must “provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

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

The Department requested [REDACTED] to provide supporting documentation by [REDACTED], 2006. [REDACTED] has failed to submit any documentation that would allow the Department a basis for reconsidering the reclassification of the assets in question.

Therefore, the outstanding tangible property tax assessments totaling \$ [REDACTED] (plus applicable interest and penalties) are deemed legitimate liabilities of [REDACTED] due payable 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 40602-2120, 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.

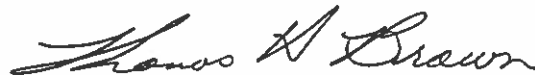
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he 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,
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
