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WILLIAM M. COX, SR.
Commissioner

In the matter of:

[REDACTED], INC.

Contact: [REDACTED], Inc.

[REDACTED]

FINAL RULING NO. 2008-28
May 28, 2008

Tangible Personal Property Tax Assessment
January 1, 1999 through January 1, 2002

FINAL RULING

The Kentucky Department of Revenue currently has outstanding tangible personal property tax assessments against [REDACTED], Inc. ([REDACTED]) totaling \$ [REDACTED] (plus applicable interest and penalties) for the periods of January 1, 1999 through January 1, 2002. A breakdown of the assessments is shown in the chart below:

Tax Year	Tax Due	Interest As of 05/28/2008	Penalty & Fees As of 05/28/2008	Total Due As of 05/28/2008
January 1, 1999	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
January 1, 2002	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TOTALS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

[REDACTED], Inc. specializes in moving manufacturing equipment and other miscellaneous equipment. [REDACTED] sells some miscellaneous items used in the moving of equipment. The taxpayer's operating location is in [REDACTED], Kentucky. [REDACTED]'s Federal Identification number is [REDACTED].

A tangible personal property tax audit was performed on [REDACTED] in conjunction with a sales and use tax audit. Within the assessment letter detailing the adjustments to the tangible personal property tax audit, [REDACTED] was prompted to submit documentation identifying licensed or apportioned vehicles incorrectly assessed within the audit. The Taxpayer complied within the forty-five (45) day protest period, but did not formally protest the assessment of the licensed or apportioned vehicles.

[REDACTED] maintains that it is unaware that a tangible personal property tax audit was performed, that it never disputed the tangible personal property tax assessment, and that the apportioned vehicles were protested and paid under the sales and use tax audit.

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.

The 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.

Therefore, the outstanding tangible property tax assessments totaling \$ [REDACTED] (plus applicable interest and penalties) are legitimate liabilities of [REDACTED], Inc. due the Commonwealth of Kentucky.

This letter is the final ruling of the Kentucky 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



Jason Snyder
Executive Director
Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED