

██████████ is in the business of selling new and used vehicles. In addition, ██████████ services vehicles, sells parts, and has a body shop. Its place of business is in ██████████, Kentucky.

The Department audited ██████████, which resulted in an assessment of \$██████████. The notice of assessment was dated ██████████, 2008.

On ██████████, 2008, ██████████ timely protested part of the assessment on the following issues: the classification of demonstrator vehicles as Line 60: Other Tangible Property and the inclusion of the miscellaneous expense account in the Line 60: Other Tangible Property calculation. No other issues were protested in the ██████████, 2008 letter. After reviewing the protest, and additional documentation, the Department agreed with ██████████ regarding the two protested issues and adjusted the outstanding assessment to the amounts listed on page one of this final ruling letter. This amount is based upon the portion of the assessment that relates to issues that were not protested by ██████████. At this point, the only item remaining before the file could be closed was payment of the outstanding assessment.

However, instead of receiving payment, the Department received additional correspondence from ██████████, which sought to (1) protest the classification of certain items and (2) request abatement of the assessed penalties. Neither of these issues had been raised in the ██████████, 2008 letter. This new correspondence was dated ██████████, 2008, seventy-seven (77) days after the date of the notice of assessment. ██████████ was notified in writing that this protest relating to these issues was not timely filed. ██████████ does not agree with the Department's position.

At issue is whether ██████████ fully complied with KRS 131.110, the statute that governs the protest of tax assessments. See also KRS 132.486. This statute unambiguously states that an assessment is due and payable unless protested within forty-five (45) days from the date of the notice. It further provides that "[t]he protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made." ██████████ did protest within forty-five (45) days the issues of improper classification of demonstrator vehicles as Line 60: Other Tangible Property and the improper inclusion of the miscellaneous expense account in the Line 60: Other Tangible Property calculation. These issues were resolved in ██████████'s favor.

As indicated above, ██████████ failed to protest these two (2) issues within the forty-five (45) day statutory period. As a result, the ██████████, 2008 correspondence cannot be considered because it is untimely under the mandatory language of KRS 131.110(1) described and quoted above. The outstanding assessments are therefore due and payable and not subject to further review.

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 Department.

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

cc: [REDACTED], P.S.C.

Attn: [REDACTED]
[REDACTED]