

**COMMONWEALTH OF KENTUCKY
BOARD OF TAX APPEALS
FILE NOS. K08-R-14**

GREEN RIVER RENTALS, INC.

APPELLANT

v.

ORDER NO. K-20435

**FINANCE AND ADMINISTRATION CABINET
COMMONWEALTH OF KENTUCKY**

APPELLEE

* * * * *

After consideration of all evidence presented at the hearings on June 10, 2009 and having reviewed the case and being otherwise sufficiently advised, the Kentucky Board of Tax Appeals hereby enters the following order:

FINDINGS OF FACT

Green River Rentals, Inc. at all times complained of was a retail rental company renting equipment and selling parts and supplies in Kentucky. It is a Kentucky corporation. As such, it is subject to Kentucky sales tax for all taxable sales and rentals.

In connection with these rentals, Green River offered its customers who leased equipment what it called "FTV waivers" which, for a price, did away with the necessity of the renter to pay for insurance for fire, theft, or vandalism. Otherwise, the renter would be liable for fire, theft or vandalism of the rented items. In effect, these waivers stand in place of or as substitute for insurance for the renter.

Green River testified that the waivers were, essentially, a way of augmenting their bottom line and cost of risk of damage to rented items were recouped another way. For purposes of this judgment this is not significant.

CONCLUSIONS OF LAW

The issue before the board is whether the monies received to the FTV waivers falls under the definition of "gross receipts" pursuant to KRS 139.050 as it existed during the period under review here, May 1, 2003, thru April 30, 2007. The board, having heard the testimony of the witnesses finds that the FTV waivers are "gross receipts" under the statute in force at the time set out above.

The FTV waivers are part of the total price of a given transaction. They are sold as a forbearance of the right of Green River to sue for damage to it's rented property, and appear to the renter, and to the board to be a kind of insurance pooling arrangement. Though that finding is not necessary to our conclusion and Green River accounts for them rather differently.

We further find that the lease in this case is an agreement evidenced on paper but is not merely or only that paper.

Upon examination of witnesses for Green River, an FTV waiver cannot be purchased by itself or outside the context of a lease or rental of equipment. They are offered as part of the rental agreement and if not purchased, the renter remains liable for the possible damage to the rented item.

We find that FTV waivers of this kind are gross receipts under the law. They are clearly so under the renditions of KRS 139.050 (both of them) in effect at the time in question. We also find that they are, under 103 KAR 2:051 (3) (1), part of:

- (a) The total amount of payments, or consideration received by the lessor from the lessee,
- (b) all itemized charges for the costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.

No doubt, the renter purchases the FTV waiver as a substitute for insurance. And though Green River has been creative and consistent in its characterization of these waivers, we find them taxable as urged by the Department of Revenue.

JUDGMENT AND ORDER

However well argued and presented, FTV waivers are taxable as gross receipts. We find against Appellant and for Appellee and order that the tax is proper as assessed by the Department of Revenue pursuant to the audit referred to for the time period above set out.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which an appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds upon which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the KBTA shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: September 8, 2009**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING.**

**William Hayes
CHAIRMAN**