

STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], INC.

Contact:

[REDACTED] Corporation

[REDACTED]

FINAL RULING NO. 2012-21
March 28, 2012

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied a sales and use refund request in the amount of \$ [REDACTED] from [REDACTED] Inc. (" [REDACTED] ") for the periods August 1, 2010 through May 31, 2011.

On July 29, 2010 the Kentucky Economic Development Finance Authority approved [REDACTED]'s Kentucky Enterprise Initiative Act ("KEIA") project, resolution number [REDACTED] in accordance with KRS 154.31. [REDACTED] was eligible for a refund of the sales and use tax that the company paid for building and construction materials used in the approved economic development project subject to the terms of KRS 139.535. As stipulated in this project agreement, the expiration date would be the project completion date or the scheduled project termination on [REDACTED], 2011, whichever occurred first.

On [REDACTED], 2011, the Department of Financial Incentives ("the Department") within the Kentucky Cabinet for Economic Development sent written notification reminding [REDACTED] of the [REDACTED], 2011, project expiration date and the refund submittal deadline within 60 days of that date. On [REDACTED], 2011, the Department sent notice confirming the project termination in [REDACTED] and the expiration of the potential sales and use tax incentives tied to the project due to [REDACTED]'s failure to timely file the required refund claim.

Subsequent to these notifications, ██████████ mailed its KEIA refund application to the DOR on ██████████, 2011. The DOR denied the refund citing the statutory requirements of KRS 139.535(3)(b).

██████████ protested the DOR's denial of its refund and argued that its application was only slightly late and was submitted within 30 days after the refund filing deadline of ██████████, 2011.

KRS 139.535(3)(a) and (b) states:

(3) (a) The approved company shall apply for the sales and use tax incentives as provided in this subsection.

(b) For an economic development project with a project term of three (3) years or less, the approved company shall submit an application to receive the sales and use tax incentives to the department within sixty (60) days of the earlier of the completion of the economic development project or the expiration of the project term.

Pursuant to the provisions of KRS 139.535, ██████████ was required to apply for the refund within 60 days of the completion of the project or the expiration of the life of the project, whichever occurs first. ██████████'s application was dated ██████████, 2011, which was more than 60 days after the expiration date of ██████████, 2011. The statutory requirements governing the refund are clear; the required documentation was not received within the required timeframe and the refund application was therefore properly denied.

For the reasons stated above, the DOR's denial of ██████████'s sales and use tax refund claim in the amount of \$██████████ was proper and is hereby upheld.

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 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 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 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. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[REDACTED]

