

purchased shall not exceed ten percent (10%) of the amount of the total credit allowable and shall not exceed twenty-five percent (25%) of the total of each tax liability which would be otherwise due. (Emphasis added.)

Subsection 3 of this statute requires that a taxpayer seeking this credit submit an application “on or before July 1 of the year following the calendar year in which the recycling or composting equipment is purchased.” This “application shall include a description of each item of recycling equipment purchased, the date of purchase, and the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used, and any other information as the [Department of Revenue] may require.” *Id.*

For the tax year ending December 31, 1999, ██████████’s application claimed the credit pursuant to KRS 141.390 for scales to determine the accurate weight of recycled/recyclable materials, a wire stripper to remove wire from recyclable materials, and a fence to secure recycling materials. For the tax year ending December 31, 1998, ██████████’s application claimed the credit pursuant to KRS 141.390 for a “BSE recycling baler,” a shelter building to cover that baler, a security fence to secure the baler and recycled materials, and a van trailer to provide a storage area for recycled copper, aluminum, etc., after baling and prior to marketing.

Statutes that grant tax exemptions, deductions or credits such as KRS 141.390, are to be strictly or narrowly construed, with any doubts resolved against their application. Tennessee Gas & Transmission Co. v. Commonwealth, 308 Ky. 571, 215 S.W.2d 102 (1948); Bigelow v. Reeves, 285 Ky. 831, 149 S.W.2d 499 (1941); Tax and Accounting Software Corp. v. United States, 301 F.3d 1254 (10th Cir. 2002). Furthermore, the claimant of a tax credit bears the burden of proving that he is entitled to the credit and that all applicable legal requirements have been met. *Id.*; see also Revenue Cabinet v. Hubbard, Ky., 37 S.W.3d 717, 719 (2000); Camera Center, Inc. v. Revenue Cabinet, Ky., 34 S.W.3d 39, 41 (2000).

To qualify for the credit in question, the taxpayer must purchase recycling equipment. KRS 141.390(2). The term “recycling equipment” is specifically defined by statute to mean:

any machinery or apparatus used exclusively to process postconsumer waste material and manufacturing machinery used exclusively to produce finished products composed of substantial postconsumer waste materials. (Emphasis added.)

KRS 141.390(1)(b). As this definition makes very clear, this equipment must be machinery or apparatus used exclusively to process postconsumer waste material or to produce finished products composed of substantial postconsumer waste materials.

The term “postconsumer waste” is specifically defined by the statute to mean:

any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, composting, and disposition and which does not include secondary waste material or demolition waste.

KRS 141.390(1)(a)(emphasis added). This provision is very clear that postconsumer waste does not include demolition waste.

The shelter building, van trailer, scales and security fencing purchased by [REDACTED] do not qualify for the credit because they are not used to process postconsumer waste but instead are used for other purposes such as weighing and storage. Moreover, these items do not constitute machinery or apparatus, but instead appear to constitute part of the taxpayer’s real property.

In addition, it appears that demolition waste is among the material processed by [REDACTED]. The law is very clear that the equipment in question must be used exclusively to process postconsumer waste and that demolition waste is not postconsumer waste. KRS 141.390(1)(a) and (b) and (2). The items purchased by [REDACTED] therefore cannot be considered to have been used exclusively in the processing of postconsumer waste.

Thus, the Department’s denial of [REDACTED]’s application for an income tax credit for recycling equipment for the tax years in question was correct and is hereby upheld.

The foregoing constitutes the final ruling of the Department of Revenue pursuant to KRS 131.110 and 103 KAR 1:010.

YOUR APPEAL RIGHTS

You may appeal this 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 ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules

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of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

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