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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED], INC.

Contact:

[REDACTED]

Tax Manager

[REDACTED], Inc.

[REDACTED]

FINAL RULING NO. 2006-44
May 25, 2006

Denial of 2002 Application for Income Tax Credit for
Recycling and/or Composting Equipment
Tax Year 2002

FINAL RULING

The Kentucky Department of Revenue has denied the 2002 application by [REDACTED], Inc. for an income tax credit for recycling and/or composting equipment in the amount of \$ [REDACTED].

Tax Year	Recycling and Composting Credit Applied For	Recycling and Composting Credit Denied
2002	[REDACTED]	[REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]

At issue is the disallowance of a tax credit allowable against income taxes for recycling or composting equipment.

KRS 141.390 allows a tax credit for recycling or composting equipment purchased for use in Kentucky. For purposes of this credit, “recycling equipment” means:

any machinery or apparatus used exclusively to process post-consumer waste material and manufacturing machinery used exclusively to produce finished products composed of substantial post-consumer waste materials[.]

See KRS 141.390(1)(b).

██████████ is a U.S. based multinational company with a treatment location in ██████████, Kentucky.

Upon arrival to the treatment facility, medical waste is typically scanned in containers for unacceptable substances like radioactive materials. After inspection, the waste is sterilized, and the resulting, post-treatment waste is transported for resource recovery, recycling or disposal in landfill operated by unaffiliated parties. The main purpose of the processing treatment is to stabilize the organic portion of the solid waste in order to render it safe to be stored, handled and used in an environmentally acceptable manner.

The facility used is an autoclave system (controlled pressurized air and water) to stabilize the organic fraction. In addition to stabilizing the organic portion, the waste is ground into very small pieces to aid in the decomposition and render potentially dangerous sharps and other objects into a harmless confetti-like substance.

It does not meet the statutory definition of “recycling equipment” because the processing of the post-consumer waste materials does not produce a marketable finished product. Therefore, the equipment at issue does not qualify as recycling equipment.

For purposes of this credit, “composting equipment” means:

equipment used in a process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled and used in a[n] environmentally acceptable manner.

See KRS 141.390(1).

The description provided above, how the equipment purchased is used to process medical waste into a material that is safe to handle, store and dispose of, does not meet the statutory definition of

“composting equipment.” Furthermore, the process that ██████████ uses on the medical waste is not in the nature of the process of composting.

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 F3d 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., 37S.W.3d 717, 719 (2000); Camera Center, Inc. v. Revenue Cabinet, Ky., 34S.W.3d 39, 41 (2000).

The Department of Revenue has determined that the items purchased by ██████████ cannot be considered recycling or composting equipment under KRS 141.390. The Department’s denial of Stericycle’s application for an income tax credit for recycling and/or composting equipment for the tax year 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.

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 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

██████████, Inc.

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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

