



**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

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Governor

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John R. Farris
Secretary

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2006-76
September 18, 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 your 2002 application for 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]

[REDACTED] sought this credit pursuant to KRS 141.390. Subsection 2 of this statute states as follows:

A taxpayer who purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste materials shall be entitled to a credit against the

income taxes imposed pursuant to this chapter, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. The amount of credit claimed in the tax year during which the recycling equipment is 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.

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.”

At issue is the disallowance of the tax credit. The taxpayer’s protest letter stated that a poultry litter shed should qualify for the recycling tax credit. The protest was subsequently denied due to the fact that a poultry litter shed is not equipment but instead a holding area and not related to a post consumer waste material. Also, poultry litter is not post consumer waste; therefore the shed is not recycling equipment. This description is very vague and does not meet the definition of Recycling and/or Composting Equipment under KRS 141.390.

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 [REDACTED] cannot be considered recycling or composting equipment under KRS 141.390. The Department’s denial of [REDACTED]’ 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.

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.

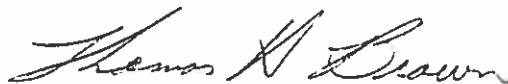
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

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
DEPARTMENT OF REVENUE



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

