



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

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John R. Farris
Secretary

In the matter of:

██████████ COMPANY, INC.

Contact: ██████████
██████████ Company, Inc.
████████████████████

FINAL RULING NO. 2006-89
October 4, 2006

**Denial of Bio-Diesel Fuel Credit Application
for the tax periods beginning on or after January 1, 2005.**

FINAL RULING

The Kentucky Department of Revenue has denied the bio-diesel fuel credit application for the tax periods beginning on or after January 1, 2005 for the amount of \$ ██████████

Tax Year	Bio-Diesel Fuel Credit Applied For	Bio-Diesel Fuel Credit Denied
2005	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████

At issue is the denial of a bio-diesel fuels tax credit application for Kentucky Corporate Income Tax purposes. The aforementioned application was denied for tax years beginning on or after January 1, 2005 due to the late filing of the application.

As stated under KRS 141.423(1):

A bio-diesel producer or a blender of blended bio-diesel shall be entitled to a nonrefundable tax credit against the taxes imposed by KRS 141.020 and 141.040 in an amount certified by the department under subsection(4) of this section. The credit rate shall be one dollar (\$1) per bio-diesel and blended bio-diesel gallons unless the total amount of approved credit for bio-diesel producers and blenders exceeds the annual bio-diesel tax credit cap. If the total amount of approved credit for all bio-diesel producers and blenders exceeds the annual bio-diesel tax credit cap, the department shall determine the amount of credit each bio-diesel producer and blender receives by multiplying the annual bio-diesel tax credit cap by a fraction, the numerator of which is the amount of approved credit for the bio-diesel producer and blender and the denominator of which is the total approved credit for all bio-diesel producers and blenders.

The Kentucky Department of Revenue and the Division of Protest Resolution denied the application due to the late filing of the application. However, applications for the bio-diesel fuel credit are due on January 15.

Each bio-diesel producer and blender eligible for the credit provided under subsection (1) of this section shall file a bio-diesel tax credit claim for bio-diesel gallons produced or blended in this state on forms prescribed by the department by the fifteenth day of the first month following the close of the preceding calendar year. The department shall determine the amount of the approved credit based on the amount of bio-diesel produced or blended in this state during the preceding calendar year and issue a credit certificate to the bio-diesel producer or blender by the fifteenth day of the fourth month following the close of the calendar year

KRS 141.423(4) (emphasis added). The taxpayer's bio-diesel fuel credit application was not received until ██████████, 2006. Therefore, it is untimely under KRS 141.423(4).

The taxpayer maintains that the application was filed late due to erroneous information that was posted on the Kentucky Department of Revenue's website which stated that the effective date of bio-diesel fuel credit application is January 1, 2006. The taxpayer further maintains that at least three separate websites show the effective date to be January 1, 2006:

1. Department of Revenue's website under "A review of Tax Law Changes"
2. Kentucky Legislature website

3. Unofficial Copy of KRS 142, Section 7, Part 4

The taxpayer's arguments are not persuasive.

First, the deadline to file the application is set by KRS 141.423(4). The Department of Revenue cannot change the law. Ky. Const. Secs. 27, 28 & 29; *Revenue Cabinet v. Lazarus*, 49 S.W.3d 172 (Ky. 2001). Second, the Kentucky Legislature website is not the official version of the Kentucky Revised Statutes. In fact, the first page of that website states that it is the "unofficial WWW Version" and that "The files making up this Internet version of the *Kentucky Revised Statutes* do not constitute official text of the statutes and are intended for informational purposes only." See <http://www.lrc.ky.gov/staterev/frontpg.htm>.

Based on the foregoing, the Department of Revenue maintains that the bio-diesel fuel credit was denied due to the untimely filing of the bio-diesel fuel credit application.

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 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

