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WILLIAM M. COX, SR.
Commissioner

In the matter of:

██████████, INC.

Contact: ██████████, President
██████████, Inc.

██████████

FINAL RULING NO. 2008-11
March 25, 2008

Denial of 2005 Applications for Income Tax Credit for
Recycling and/or Composting Equipment

FINAL RULING

The Kentucky Department of Revenue has denied the 2005 Applications for Income Tax Credit for Recycling and/or Composting Equipment, Schedules RC. The table below summarizes the amount of credit that has been denied.

Tax Year	Recycling & Composting Credit per the Application	Recycling & Composting Credit Denied
2005	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████

██████████, Inc. ("██████████") is a ██████████ farm. The muck and straw is removed from the barns, processed by the baler into rolls, and then used by local cattle farmers as feed for their cattle. ██████████ applied for the Income Tax Credit for Recycling and/or Composting Equipment pursuant to KRS 141.390.

KRS 141.390 allows for a tax credit for recycling and/or composting equipment purchased for use in Kentucky. At issue is the Department of Revenue's ("Department") position that a muck baler does not meet the statutory requirements set forth in KRS 141.390.

██████████ argues that the muck baler is equipment that performs the recycling/composting process and should qualify for the credit. It is the Department's position that the muck and straw is not a product generated by a business or consumer which has served its intended use; and it has not been separated from solid waste for the purpose of collection, recycling, composting and disposition.

KRS 141.390(1)(a), (b) and (c) provide definitions and state:

(1) As used in this section:

- (a) "Postconsumer Waste" means 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 collecting, recycling, composting, and disposition and which does not include secondary waste material or demolition waste;
- (b) "Recycling equipment" means 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 material; and
- (c) "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 environmentally acceptable manner.

KRS 141.390(2) states:

A taxpayer who purchases recycling or composting equipment to be used exclusively within this state for recycling and composting postconsumer waste materials shall be entitled to a credit against the income taxes imposed pursuant to this chapter, in the amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. The amount of the 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 otherwise be due.

It is the position of the Department that muck is a secondary waste material and not postconsumer waste as defined by KRS 141.390(1)(a); therefore, ██████████'s equipment does not meet the definition of recycling equipment as stated in KRS 141.390(1)(b). Furthermore, the equipment does not qualify as composting equipment as ██████████'s operations are 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. Recves, 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., 37 S.W.3d 717, 719 (2000); Camera Center, Inc. v. Revenue Cabinet, Ky., 34 S.W.3d 39, 41 (2000).

██████████ filed the initial protest on ██████████, 2006. The Department requested additional information in letters dated ██████████, 2006; ██████████, 2006; and ██████████, 2007. ██████████ did not respond to the requests.

The Department of Revenue has determined that the muck baler purchased by ██████████, Inc. does not qualify for the income tax credit under KRS 141.390. Therefore, the Department's denial of ██████████, Inc.'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.

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



Jason Snyder
Executive Director
Office of Legal Services

CERTIFIED MAIL
RETURN RECEIPT REQUESTED