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JONATHAN MILLER
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Commissioner

In the matter of:

██████████, INC.

Contact: ██████████ Inc.

██████████
██████████

FINAL RULING NO. 2010-29
May 6, 2010

Denial of 2006 Application for Income Tax Credit for
Recycling and/or Composting Equipment

FINAL RULING

The Kentucky Department of Revenue has denied the 2006 ██████████, Inc. ("██████████") Application for Income Tax Credit for Recycling and/or Composting Equipment, Schedules RC for failure to comply with the requirements as set forth in KRS 141.390(3). The table below summarizes the amount of credit that has been denied.

Tax Year	Recycling & Composting Credit per the Application	Recycling & Composting Credit Denied
2006	\$ ██████████	\$ ██████████

██████████ applied for certain income tax credits for recycling or composting equipment pursuant to KRS 141.390 by submitting the application referred to above on ██████████, 2008. The cover letter accompanying this application, also dated ██████████, 2008, stated as follows:

Management was not aware of the filing requirement for receiving the recycling credit. Management thought they would receive a check directly from the Kentucky Department of Revenue after purchasing the equipment. Therefore, we were not alerted of the purchase recycling equipment in order to file timely by July 1, 2007.

The corporation has an exemplary record of compliance with the Kentucky Department of Revenue, as well as the Internal Revenue Service. Therefore, the attached application should be approved based on reasonable cause.

KRS 141.390(3) states as follows:

Application for a tax credit shall be made to the Department of Revenue on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased. The 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 the Department of Revenue may require.

There is no statutory authority in KRS 141.390 allowing the Department to waive this statutory deadline. 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). The claimant of a tax credit bears the burden of proving it is entitled to the credit and that all applicable legal requirements have been met. Revenue Cabinet v. Hubbard, 37 S.W.3d 717, 719 (Ky. 2000); Camera Center, Inc. v. Revenue Cabinet, 34 S.W.3d 39, 41 (Ky. 2000). Unfortunately, the taxpayer failed to comply with the statutorily mandated deadline for filing the credit.

With respect to ██████████ assertion that management was not aware of the filing requirement for receiving the recycling credit, Kentucky courts have repeatedly held that:

There is a maxim as old as the law itself, *ignorantia legis neminem excusat*, 'ignorance of the law excuses no one', 42 C.J.S. page 380. This is a rule of necessity, otherwise ignorance of the law would furnish immunity from punishment for violations of the Criminal Code and immunity from liability for violations of personal and property rights. Topolewski v. Plankington, 143 Wis. 52, 73, 126 N.W. 554, In Logsdon v. Haney, 74 S.W. 1073, 25 Ky. Law Rep. 245, it was written that this maxim has been applied with the same rigor in this jurisdiction as elsewhere, and that one's non-action through ignorance of the law could not be allowed to extend or enlarge his legal rights.

Freeman v. Louisville & Jefferson Planning & Zoning Comm'n, 308 Ky. 360, 214 S.W.2d 582, 583 (1948). In that case, the plaintiff argued that it was not aware of a law change that shortened the time in which to file an appeal. The court rejected that argument, holding that:

. . .like all changes made in the law by the Legislature, it was necessary for the litigants to keep themselves informed thereof-ignorance on the part of a litigant of a change the Legislature has made in the law will not excuse him from its effect nor allow him to extend or enlarge his legal rights.

Id. at 584. Similarly, ignorance of the statutory deadline does not provide a legal basis for extending the statutory deadline, particularly when the legislature provided no express authority in KRS 141.4242 for the Department to do so.

As to ██████████' assertion that the application should be accepted based on reasonable cause, it is the Department's position that the reasonable cause argument applies only to tax penalties. See 103 KAR 1:040.

██████████, by its own admission, failed to comply with the statutory deadline. KRS 141.390 does not grant the Department the authority to waive this deadline. Therefore, the Department's denial of the application as untimely was correct and 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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only 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



E. Jeffrey Moxley
Interim Executive Director
Office of Legal Services for Revenue

cc:

[REDACTED]
[REDACTED], PSC
[REDACTED]