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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

[REDACTED] COMPANY

Contact: [REDACTED]
[REDACTED] Company

FINAL RULING NO. 2011-07
January 28, 2011

Denial of 2008 Application for Income Tax Credit for
Recycling and/or Composting Equipment

FINAL RULING

The Kentucky Department of Revenue ("the Department") has denied the 2008 Application for Income Tax Credit for Recycling and/or Composting Equipment, Schedules RC, of [REDACTED] ("[REDACTED]") for its failure to satisfy the definitions of postconsumer waste and recycling equipment set forth in KRS 141.390(1)(a) and (b). The table below summarizes the amount of credit that has been denied:

Tax Year	Recycling & Composting Credit Claimed by [REDACTED]	Recycling & Composting Credit Denied
2008	\$ [REDACTED]	\$ [REDACTED]

[REDACTED]'s credit application was for its [REDACTED] project, which provided the [REDACTED] and equipment as part of the [REDACTED] upgrades. The [REDACTED] was raised and reinforced to increase its ability to be used as a receptacle to collect and store [REDACTED] and [REDACTED].

At issue in this dispute is whether the Department correctly denied [REDACTED]'s application for income tax credits for recycling or composting equipment pursuant to KRS 141.390.

[REDACTED]'s position is that [REDACTED] and [REDACTED] are both byproducts of a [REDACTED] that have served their intended end use and thus qualify as a postconsumer waste under KRS 141.390(1)(a). [REDACTED] also argues that the assets purchased and equipment installed in service during 2008 which were used exclusively as part of the [REDACTED] upgrades qualify for the recycling credit. The Department determined that the [REDACTED] and [REDACTED] did not fall into the definition of the postconsumer waste set forth in KRS 141.390(1)(a), and the [REDACTED] was used for the collection and storage of [REDACTED] and [REDACTED] that did not meet the requirement pursuant to KRS 141.390(1)(b).

KRS 141.390(1)(a) states:

“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 collection, recycling, composting and disposition and which does not include secondary waste material or demolition waste;...

[REDACTED]'s [REDACTED] to generate [REDACTED]. As part of the [REDACTED] generating process, the [REDACTED] will [REDACTED], the remnants of [REDACTED] is the [REDACTED] residuals. The [REDACTED] residuals are [REDACTED] and [REDACTED].

[REDACTED] and [REDACTED] are not “products ... which have served their intended end use.” Since the [REDACTED] does not have any “intended end use” in the energy generation process it cannot be said to have served that use. Simply capturing a waste product which may have some additional value does not meet the KRS 141.390(1)(a) definition of recycling, which requires a product which has been used in the taxpayer's process, separated from solid waste and then re-used. While the [REDACTED] in question has been separated from other solid waste, and may, in some instances, be being re-used, it has not been used in the process of creating [REDACTED]. Instead, the [REDACTED] is a new by-product of the energy creation process. Because the [REDACTED] is created by the process rather than being used in the process, it cannot qualify for recycling treatment under KRS 141.390(1)(a).

In addition, KRS 141.390(1)(b) states:

“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 materials.

█ has admitted that the stored █ and █ are not regularly used as construction materials or for any other purpose. However, in order to qualify for the credit apparatus must be used “exclusively” to process postconsumer waste material. █ is obligated to collect and store the █ and █ already, and uses the storage █s in question to do so. Currently the █s are used only for storage and no further use of the █ and █ is occurring. Clearly the primary purpose of the █ is for storage rather than for any claimed recycling. But recycling must be the exclusive use of the apparatus in question in order to qualify for the credit. Occasionally using some of the contents of the █ as construction material does not change the fact that the primary purpose of the █ is for simple waste storage. Since the █ and █ stored in the █ was not regularly and continuously used, the requirement that the apparatus be used “exclusively” to process postconsumer waste material is not satisfied.

After reviewing the available information, and the applicable statutes, it is the position of the Department that █’s Application for Income Tax Credit for Recycling and/or Composting Equipment in the amount of \$█ was properly denied.

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 Mosley
Interim Executive Director
Office of Legal Services for Revenue