



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████, LLC

Contact: ██████████, Tax Manager
██████████, LLC
██████████

FINAL RULING NO. 2013-17
March 15, 2013

Denial of 2011 Application for Income Tax Credit for
Recycling and/or Composting Equipment

FINAL RULING

The Kentucky Department of Revenue ("the Department") has denied the 2011 Application for Income Tax Credit for Recycling and/or Composting Equipment, Schedules RC, of ██████████, LLC (hereafter "██████████"). The table below summarizes the amount of credit that has been denied:

Tax Year	Recycling & Composting Credit Claimed	Recycling & Composting Credit Denied
2011	\$ ██████████	\$ ██████████

██████████ is a wholly owned subsidiary of ██████████ and part of the ██████████ rendering company in North America. The company provides ██████████ animal and bakery by-product and restaurant grease recycling services ██████████ reclaiming these materials into a host of value-added product streams from superior animal feed and pet food ingredients to renewable fuels and organic fertilizers.

At issue in this dispute is whether ██████████ can apportion the recycling credit on recycling equipment when it is not used exclusively in Kentucky.

It is ██████████'s position that ██████████, Inc. had an agreement with the Department that allowed them to claim the recycling credit for trucks and trailers based on the percent of trips to Kentucky customers. ██████████, Inc. sold all of its assets to ██████████. ██████████ is a disregarded entity filing with ██████████.

It is the Department's position that there are no provisions in KRS 141.390 to allow for apportioning the recycling credit on recycling equipment when it is not used exclusively in Kentucky. KRS 141.390(2)(a) provides in part:

A taxpayer that 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, including any tax due under the provisions of KRS 141.040, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment.

Furthermore, there are no provisions in either KRS 141.390 or the letter from the Supervisor of the Taxpayer Assistance Section to ██████████, Inc. that allows for assignment to a new owner of the assets.

For the reasons stated above, the portion of the recycling credit indicated on the table above has been 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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



