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Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], Inc.

Contact: [REDACTED], Controller

FINAL RULING NO. 2015-42
October 13, 2015

Denial of 2014 Ethanol Credit Application
Tax Year 2014

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied the 2014 Application and Credit Certificate of Income Tax/LLET Credit-Ethanol, Schedule ETH ("Schedule ETH"), for failure to comply with the statutory requirements set forth in KRS 141.4242(3).

The taxpayer, [REDACTED], Inc. ("the Applicant") applied for certain income tax/LLET credits for ethanol production pursuant to KRS 141.4242 by submitting Schedule ETH on [REDACTED], 2015 ("the Application").¹ The cover letter accompanying the application, also dated [REDACTED], 2015, stated as follows:

Attached is the ETH schedule for [REDACTED] located on [REDACTED] KY. As discussed this morning, I realize this form has been sent in after the January 15 date as indicated on the form. We switched our tax preparer from [REDACTED] to [REDACTED] late in 2014 and this schedule was missed in the information exchange with the new firm. I appreciate if you could consider a temporary extension of the date and allow this request to be reviewed. Our company has recently become profitable after many years in [REDACTED] and this credit was very helpful in 2013 in assisting [REDACTED] to expand our business in KY during 2014.

¹ The Application claimed the Applicant produced [REDACTED] gallons of ethanol meeting the ASTM standard.

(Emphasis added.) KRS 141.4242(3) states as follows:

Each ethanol producer eligible for the credit provided under subsection (1) of this section shall file an ethanol tax credit claim for ethanol gallons produced in this state on forms prescribed by the department by January 15 following the close of the preceding calendar year.

(Emphasis added.) 103 KAR 15:110 Section 2 further states as follows:

Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

(Emphasis added.) The instructions for Schedule ETH state:

To ensure proper processing, fax or e-mail Schedule ETH to the Department of Revenue no later than January 15 following the close of the preceding calendar year. Schedules postmarked or sent after January 15 are void.

There is no statutory authority in KRS 141.4242 allowing DOR to waive the statutory deadline for application submission; both Section 2 of 103 KAR 15:110 and the instructions for Schedule ETH clearly affirm that compliance with the January 15 due date is required in order to obtain the credit. Moreover, subsequent to the filing date of January 15, DOR is required in KRS 141.4242(3) to make certain calculations and determinations, based on the applications filed. In an email dated ██████████ 2015, DOR denied the Application for failure to meet this statutory deadline for submission of January 15, 2015. Thus, pursuant to KRS 141.4242(1)(a) all available credit for tax year 2014 was awarded to ethanol producer(s) compliant with all requirements of KRS 141.4242.²

Statutes that grant tax exemptions, deductions or credits such as KRS 141.4242, 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); Tax and Accounting Software Corp. v. United States, 301 F.3d 1254 (10th Cir. 2002). Furthermore, the claimant of a tax credit bears the burden of proving it is

² The credit rate is up to \$1 per gallon with a total cap for all taxpayers not to exceed \$5,000,000 annually, except in the case of the unused cap of the cellulosic ethanol tax credit.

entitled to the credit and that all applicable legal requirements have been met. Id.; see also 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)

The Applicant, by its own admission, failed to comply with the statutory deadline of January 15, 2015. KRS 141.4242 does not grant DOR the authority to waive this deadline. Therefore, DOR's denial of the Application as untimely was correct.

This letter is the final ruling of the Department.

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 Board 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. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; 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,

DEPARTMENT OF REVENUE



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [REDACTED] CPA, MST
Partner

[REDACTED]