



██████████ owns and operates the assets of the ██████████ and ██████████ ██████████ lines of a manufacturing facility in ██████████, Kentucky. In order to create its ██████████ at the ██████████ facility, ██████████ blends various food ingredients into a standardized mix which is bagged. ██████████ then weighs each food bag to ensure that it meets weight specifications.

If a food bag fails to meet its weight specifications, ██████████ sends the bag to a separate manufacturing line to (1) weigh the amount of ingredients which can be reused in future ██████████ (the “Reusable Ingredients”); (2) separate the bag and unusable ingredients from the Reusable Ingredients, and (3) process the Reusable Ingredients. The Reusable Ingredients are then merged with new ingredients to create ██████████. This process results in ██████████ comprised of 20 percent Reusable Ingredients and 80 percent new ingredients.

██████████ contends that its purchases of scales, dumpers, feeders, ingredient delivery lanes, and hoppers (the “Equipment”) for the Reusable Ingredient manufacturing line qualify for the Kentucky recycling credit in KRS 141.390. Under Kentucky law, each piece of Equipment may only qualify for the recycling credit in KRS 141.390 if it meets the statutory definition for “recycling equipment” or “composting equipment.” KRS 141.390(2)(a). KRS 141.390(1)(b) provides that 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.” In turn, the definition of “postconsumer waste” is “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.” KRS 141.390(1)(a).

In order for the Equipment to qualify as recycling equipment, the Reusable Ingredients must constitute *postconsumer* waste. However, a Reusable Ingredient is not a “product generated by a business or consumer which has served its intended end use,” as required by the postconsumer waste definition in KRS 141.390(1)(a). In fact, the Reusable Ingredients have not yet passed into the hands of any consumers. Additionally, the intended end use of the Reusable Ingredients is to be eaten as a ██████████ by consumers, not to fail quality control and be placed back into the manufacturing process. The Reusable Ingredients are, at best, pre-consumer food waste. Consequently, the Reusable Ingredients do not fall within the realm of the statutory definition for postconsumer waste in KRS 141.390(1)(a).

Since the Reusable Ingredients do not constitute postconsumer waste, the Equipment cannot constitute “machinery or apparatus used exclusively to process postconsumer waste material under KRS 141.390(1)(b).” Moreover, even if the Reusable

Ingredients were postconsumer waste, since the finished frozen meal is comprised of 80 percent new ingredients, the Equipment does not qualify as “manufacturing machinery used exclusively to produce finished products composed of *substantial* postconsumer waste materials.” Finally, to the extent, if any, the Equipment processes any new ingredients, the Equipment would fail to meet the exclusivity requirement in KRS 141.390(1)(b). For all of these reasons, ██████████ has failed to establish that the Equipment is recycling equipment.

Based on the above, the Equipment does not qualify as recycling equipment eligible for the recycling credit in KRS 141.390. Accordingly, the Department properly denied the Recycling Credit Application.

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. 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