In the matter of: 

[LLC]

Contact: [Name], CPA 

[LLC]

Final Ruling No. 2005-81 
November 28, 2005

Sales and Use Tax assessment 
Periods April 1, 2000 through December 31, 2000 and 
January 1, 2003 through December 31, 2003

FINAL RULING

The Kentucky Department of Revenue has an outstanding sales and use tax assessment against [LLC] for the period April 1, 2000 through December 31, 2000. The following schedule reflects the total underpayment, including applicable interest accrued to date and the applicable fee for the period.

<table>
<thead>
<tr>
<th>Period</th>
<th>Tax</th>
<th>Interest as of 10/28/05</th>
<th>Fee</th>
<th>Penalties</th>
<th>Total per Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/00 - 12/00</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

By letter dated [Date], 2005, [Name]'s protest was delivered by certified mail to the Department of Revenue disputing this assessment. For the reasons that follow, this assessment is a legitimate tax liability of [LLC] to the Commonwealth of Kentucky.

The Department's audit determined that during the period in question, [Name] purchased five rock trucks during 2000 in the amount of $[Amount]. This equipment was purchased by the taxpayer after entering into a contract to recover and dispose of refuse spill
material. This specific event caused the governor of Kentucky to declare a state of emergency when the sludge seeped into two streams that eventually flow into the Ohio River. [Redacted] had not previously been in the business of emergency clearing of environmental spills or reclamation. [Redacted] maintains that the equipment continued to be used in the performance of other mining reclamation contracts and is exempt under the provisions of KRS 139.480(10) and KRS 139.170. The Department’s position is that contractors cannot qualify for the new and expanded machinery exemption because they cannot meet the requirements for the exemption as defined in KRS 139.170 which states in part:

(1) "Machinery for new and expanded industry" means machinery:
   (a) Used directly in a manufacturing or processing production process;
   (b) Which is incorporated for the first time into a plant facility established in this state; and
   (c) Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:
       1. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
       2. Performs different functions;
       3. Is used to manufacture a different product; or
       4. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.

Based upon the foregoing, the information supplied with the protest and supporting statement, the Department has determined that the sales and use tax audit assessment totaling $[Redacted] (plus applicable interest and fees) is deemed a legitimate liability of [Redacted] LLC due the Commonwealth of Kentucky.

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 40602-2120, 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 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board 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

THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED