



**FINANCE AND ADMINISTRATION CABINET  
OFFICE OF THE SECRETARY**

**Ernie Fletcher**  
Governor

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**John R. Farris**  
Secretary

In the matter of:

██████████ CORPORATION

Contact: ██████████ Corporation

Attn: ██████████  
██████████

FINAL RULING NO. 2006-104  
October 20, 2006

Use tax assessment  
Periods January 1, 2002 through December 31, 2003

**FINAL RULING**

The Kentucky Department of Revenue has outstanding use tax assessments against ██████████ Corporation for the periods January 1, 2002 through December 31, 2003. The following schedule reflects the total underpayment, including applicable interest accrued to date:

Period	Tax	Interest as of 11/20/06	Penalty	Fees	Total per period
01/01/02-12/31/02	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
01/01/03-12/31/03	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
Totals	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

During the periods under audit, the corporation was a manufacturer of ██████████ and other related production equipment.

At issue is whether the welding tips, nozzles and gases that are not reusable after the job is completed are exempt under KRS 139.470(11)(a)(3).

It is the Department's position that the welding tips and nozzles are consumed in the manufacturing but do not become part of the product. Therefore, the materials would be considered repair and replacement parts as defined in KRS 139.170(4).

KRS 139.170(4) defines repair and replacement parts as "any tangible personal property used to maintain, restore, mend or repair machinery or equipment. Repair, replacement or spare parts does not include machine oils, grease or industrial tools."

The items in question are not exempt because they fail to become a part of the finished product as required under KRS 139.470(11)(a)(1) which defines exempt materials used in the manufacturing process as "[m]aterials which enter into and become an ingredient or component part of the manufactured product."

The Department's position on the gases is all gases that are energy or energy producing fuels can only qualify for exemption pursuant to KRS 139.480(3).

KRS 139.480(3) states in part:

All energy or energy-producing fuels used in the course of manufacturing, processing, mining or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production.

The auditor determined at the time of the audit that the corporation did not qualify for the energy exemption. The Department gave the taxpayer until ██████████, 2004 to respond with supporting documentation or pay in full, however, ██████████ Corporation did neither. The Department again sent letters to the corporation in 2005 and 2006 requesting supporting documentation or payment but received nothing.

Therefore, the outstanding sales and use tax assessments totaling \$████████ (plus applicable interest) are a legitimate liability of ██████████ Corporation due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

### APPEAL

You may appeal this 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 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 time and date set for any hearing.

Sincerely,  
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN, Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

