



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

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**John R. Farris**  
Secretary

In the matter of:

██████████ LLC

Contact: ██████████ Tax Director  
██████████, Inc.

FINAL RULING NO. 2007-07  
March 30, 2007

Sales and Use Tax Refund Denied  
Period 1/1/2003-1/31/2003

**FINAL RULING**

The Kentucky Department of Revenue has denied a refund of tax paid under protest for ██████████ LLC ("██████████") for the period January 1, 2003 through January 31, 2003. The following schedule reflects the tax and interest portions of the denied refund.

Period	Tax Paid	Interest Paid	Total Paid-Refund Denied
1/1/03-1/31/03	\$ ██████████	\$ ██████████	\$ ██████████

██████████ is a manufacturer of ██████████ and ██████████ with one location in Kentucky, which ceased operations in ██████████ 2002.

At issue is the assessment of sales tax on the sale of selling activity assets. ██████████'s entire plant was sold in ██████████ 2003. ██████████ had taken a deduction for sales for resale on the sales tax return for the sale of all of the plant assets. The deduction was disallowed for the non-manufacturing assets as a result of the audit.

It is ██████████'s opinion that the sale was an occasional sale and should be exempt from sales tax pursuant to KRS 139.470(4) and KRS 139.070(1)(b). In a ██████████, 2004 letter which included payment of \$ ██████████, ██████████ stated that the sale of the facility qualified as an occasional sale because "...the said assets did not change in form after the transfer of

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ownership.” In a ██████████, 2006 letter to the Department, ██████████ clarified this statement by explaining that the facility was a ██████████ processing location prior to the sale and was anticipated to continue to be a ██████████ processing location after the sale. ██████████ paid the tax due on the assessment and requested a refund based on its protest of the assessment.

The Department’s position is that the portion of the sale representing non-manufacturing assets does not qualify as an occasional sale. The sales contract provided by the taxpayer stated a lump sum selling price of \$██████████ for all assets. KRS 139.070 states in part that an occasional sale includes “...a sale of property not held or used by the seller in the course of an activity for which he is required to hold a seller’s permit...” Kentucky courts have ruled that property used in the manufacturing process are nonretail assets eligible for the occasional sale exemption. See generally George W. Wohrley, Inc. v. Department of Revenue, 495 S. W. 2d 173 (Ky. 1973); Commonwealth ex rel. Luckett v. Revday Industries, Inc., 432 S. W. 2d 819 (Ky. 1968). Since a sales and use tax permit is not required to manufacture, the assets used in the manufacturing process qualify for exemption as an occasional sale. However, the assets that are not used in the manufacturing process but in activities such as marketing, sales, and distribution of manufactured products are considered selling activity assets whose sale does not qualify for the occasional sale exemption. The sales contract did not detail the manufacturing versus non-manufacturing assets. However, ██████████’s final property tax return filed for January 2002 reported the value of non-manufacturing assets at \$██████████ thus becoming the basis of the assessment. ██████████’s sale of these assets would not qualify for the occasional sale exemption.

██████████’s letter dated ██████████, 2004 stated that the sale should be treated as an occasional sale because the assets did not change in form after the transfer of ownership. KRS 139.070(1)(b) states that an occasional sale includes “...any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.” (Emphasis added.) The Department explained in letters dated ██████████, 2005, ██████████, 2005 and ██████████, 2005 that the statute plainly states that the ownership of the assets must be similar after the sale, not the form of the assets. These letters also stated that ██████████ had the right to request a conference or a final ruling on the matter. No response was received from ██████████.

Based upon the foregoing, the Department has determined that tax was correctly assessed on the occasional sale of non-manufacturing assets and that the tax paid by ██████████ on this transaction should not be refunded.

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



DONALD S. GUIER  
Executive Director  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

