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Governor

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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] COMPANY

Contact:

[REDACTED] Company  
[REDACTED]

FINAL RULING NO. 2014-07  
January 17, 2014

Unpaid interest for the period July 1, 2007 – April 30, 2011  
and  
Use Tax Refund Denial  
for the period July 1, 2007 through November 30, 2008

**FINAL RULING**

The Kentucky Department of Revenue (“DOR”) has denied [REDACTED] [REDACTED]’s (“[REDACTED]”) refund claims for sales tax paid by its energy suppliers for sales of energy or energy-producing fuel to [REDACTED]. The schedule below reflects the denied refund claims and the applicable interest projected through January 17, 2014.

| REFUND CLAIMS DENIED |               |                             |               |
|----------------------|---------------|-----------------------------|---------------|
| Period               | Tax           | Interest as of<br>1/17/2014 | Totals        |
| 7/1/07-12/31/07      | \$ [REDACTED] | \$ [REDACTED]               | \$ [REDACTED] |
| 1/1/08-8/31/08       | \$ [REDACTED] | \$ [REDACTED]               | \$ [REDACTED] |
| <b>TOTALS</b>        | \$ [REDACTED] | \$ [REDACTED]               | \$ [REDACTED] |

[REDACTED] is a manufacturer and seller of refractory products.

DOR and ██████████ executed a Department of Revenue Form 31A 349 on ██████████, 2011 extending the time limitation for assessments and refunds for portions of the audit period soon to expire (7/1/2007-11/30/2008) until ██████████/2012. During the course of the audit, DOR determined that ██████████ had paid tax to its energy suppliers in an amount which exceeded three percent (3%) of the cost of production in several of its plant facilities. ██████████'s consumption of energy in excess of this three percent (3%) threshold at the respective plant facility's location rendered it potentially eligible for the partial exemption granted by KRS 139.480(3) for "energy or energy-producing fuels used in the course of manufacturing, processing, mining or refining."

The process for claiming this exemption by purchasers of energy or energy-producing fuel is set forth by Kentucky Regulation 103 KAR 30:140. This regulation establishes the authorization and filing process for a consumer to pay directly to the Department whatever tax is due on its energy purchases, taking into account the application of KRS 139.480(3). Because this exemption or partial exemption is computed upon the basis of each plant facility's location, this energy direct pay authorization must be obtained for each such location. See Application for "Energy Direct pay Authorization," Form 51A109; 103 KAR 30:140 §§ 4 and 5.

At issue is whether the refund claims for the periods from July 1, 2007 through August 31, 2008 asserted by ██████████ are untimely under KRS 134.580.

██████████ submitted its Energy Direct Pay Authorization Application at the conclusion of the audit in ██████████ 2012. At this time it also included its refund claim for energy purchases back through periods ending August 2008. These claims had been assigned to ██████████ by its energy suppliers.

The applicable refund statute is KRS 134.580. See KRS 139.770(1). Subsection 4 of KRS 134.580 unambiguously states that "[n]o refund shall be made unless each taxpayer individually files an application or claim for the refund within four (4) years from the date payment was made." The ██████████ 2012 refund claim submitted by ██████████ was based upon its anticipated qualification for an Energy Direct Pay authorization. The refund claim relates to taxes remitted by ██████████'s energy suppliers; therefore, taxes remitted by these energy suppliers more than four (4) years from the date of the refund claim are clearly untimely under KRS 134.580(4).

██████████ seeks to avoid the untimeliness of these refund claims by relying upon the following language of KRS 134.580(4):

Nothing in this section shall be construed to authorize the agency to make or cause to be made any refund except within four (4) years of the date prescribed by law for the filing of a return including any extension of time for filing the return, or the date the money was paid into the State Treasury, whichever is the later, except in any case where the assessment period has been extended

by written agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly. (Emphasis added.)

██████████'s reliance upon this language or more precisely, the exception to the four year statute of limitation the statute provides is misplaced because the "taxpayer" the language refers to is the person who paid the tax in question into the State Treasury. KRS 134.580(2); See also KRS 139.200; 139.210(3) and (4); 139.540; 139.550; 139.580; 139.770(3); The Gap, Inc. v. Revenue Cabinet, Ky. Tax Reporter (CCH) ¶ 202-515 (Ky. Bd. Tax. App., Order No. K-17639, August 12, 1999). In the case of the refund claims at issue here, the persons who paid the sales tax into the State Treasury were ██████████'s energy suppliers. The agreement extending ██████████'s assessment period was not between the Department and those suppliers, and thus did not and cannot extend the time limitation for asserting the refund claims they would have had to assert. See KRS 134.580(3).

The energy suppliers cannot convert untimely refund claims into timely ones by assigning them to ██████████. An assignee does not acquire any greater rights than what was possessed by the assignor and simply stands in the shoes of the assignor. See, e.g., 6 Am.Jur.2d Assignments § 144 (1999). Accordingly, the refund claims at issue are untimely and the statutory language invoked by ██████████ to avoid the running of KRS 134.580's statute of limitations is inapplicable.

For the reasons stated above, the refund claims for periods July 2007 through August 2008 totaling \$██████████, plus applicable interest, were properly denied.

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,  
FINANCE AND ADMINISTRATION CABINET



Attorney Manager  
Office of Legal Services for Revenue

cc:

[REDACTED]  
LLP

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED





