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WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

[redacted]

Contact: [redacted]

FINAL RULING NO. 2016-18
April 27, 2016

Sales and Use Tax refund claim denial
for the periods January 1, 2007 through December 31, 2007

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied a refund claim submitted by [redacted] ("[redacted]"). The pertinent amount of the refund claim and the period to which it relates is set forth below. The Department's denial of the refund claim has been protested in accordance with KRS 131.110 and 103 KAR 1:010.

REFUND CLAIMS DENIED			
Period	Tax	Interest as of 04/27/2016	Totals
1/1/07 - 12/31/07	$[redacted]	$[redacted]	$[redacted]
TOTALS	$[redacted]	$[redacted]	$[redacted]

[redacted] is a common carrier by rail that operates locomotives in interstate commerce. [redacted] operates on approximately [redacted] miles of track in Kentucky.

[redacted] filed a refund request for use tax accrued on weed killer used to eliminate or prevent the growth weeds on the track line. The claims were reviewed and denied by DOR. [redacted] timely protested the denial.

asserts that these purchases are exempt from tax under 103 KAR 26.050 § 2, which states:

> (2) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce. The term "rolling stock" shall mean only that equipment designed to move on rails and used for the transportation of goods or passengers for hire.

It is well settled that all purchases of tangible personal property in Kentucky or for use, storage or other consumption in Kentucky by a common carrier such as are subject to tax unless an exemption from taxation applies. Delta Air Lines, Inc. v. Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985); 103 KAR 26:050 § 1. The tangible personal property that is the subject of the transactions in question is a supply used to maintain 's railway system or track. The exemption for items that claims pursuant to 103 KAR 26:050 extend "only [to] fuel or supplies for the direct operation of locomotives or trains, used or to be used in interstate commerce." Louisville & Nashville R. Co. v. Department of Revenue, 551 S.W.2d 259, 261 (Ky. App. 1977). See also KRS 139.480(1).

The weed killer chemical in question is not a fuel or other supply for the direct operation of locomotives and trains. Instead, the chemicals are used to prevent or eliminate vegetation from growing along the railway system or track. The weed killer chemicals are not used in the direct operation of the locomotives or trains themselves in contrast to fuel powering the trains or other supplies being utilized in the direct operation of locomotives or trains. "Exemptions from taxation must not be presumed or implied, but rather must be clearly stated." LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004). The language of 103 KAR 26:050 § 2(2) does not support the exemption claims and does not convey the meaning ascribes to it.

Therefore, has not met its burden of establishing that the purchases (or the use, storage or consumption) of the weed killer in question is exempt from tax. Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky. 2004); Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989). relies heavily upon various administrative pronouncements by the State of concerning one of its sales and use tax exemption statutes. These pronouncements are not binding upon Kentucky or in this case, especially where the Kentucky statute has already been the subject of construction in prior cases (e.g., Louisville & Nashville R. Co. v. Department of Revenue, supra). See, e.g., Epsilon Trading Co., 775 S.W.2d at 941-42. Furthermore, the statute also does not contain the same language as KRS 139.480(1).

Based upon the foregoing, DOR has properly denied ' sales and use tax refund claim

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

Bethany Atkins Rice

Attorney Manager
Office of Legal Services for Revenue

cc: [redacted]
Managing Principal
[redacted], Inc
[redacted]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED