



ERNIE FLETCHER  
GOVERNOR

**DEPARTMENT OF REVENUE**  
FINANCE AND ADMINISTRATION CABINET  
200 FAIR OAKS LANE  
FRANKFORT, KENTUCKY 40620  
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ROBBIE RUDOLPH  
SECRETARY

In the matter of:

██████████ COMPANY

Contact: ██████████  
Company

FINAL RULING NO. 2004-21  
May 25, 2004

Sales and use tax assessments for the periods  
January 1, 2000 through March 31, 2003

**FINAL RULING**

The Finance and Administration Cabinet currently has an outstanding sales and use tax audit assessment against ██████████ Company for the period January 1, 2000 through March 31, 2003. The assessment is based on the failure of ██████████ Company to accrue and remit use tax on the purchase of tangible personal property considered by the Cabinet to be repair parts. The total amount of outstanding tax is \$██████████, plus applicable interest charges computed to the date of ██████████, 2004, in the amount of \$██████████, for a total liability due of \$██████████.

██████████ Company is a manufacturer of ██████████ and ██████████ in ██████████, Kentucky, and is also a manufacturer of ██████████ in ██████████, Kentucky.

At issue is whether the Cabinet properly assessed use tax on certain items of tangible personal property purchased by the taxpayer to replace, maintain, or repair items that are used in the manufacturing process.

The taxpayer claims that cartridge filters for the vacuum dust control machine are not used for maintenance of the machine, but are industrial supplies as defined in KRS 139.470(11)(1)2b.

The taxpayer argues that the replacement parts purchased, such as impeller and wear rings used to repair or rebuild the mixing tanks are exempt since the original mixing tank was exempt as manufacturing machinery. The taxpayer claims that replacement of

durogrip rubbers used to grab the containers and lids in the packaging area are industrial tools. And, it is the taxpayer's contention that the purchase of replacement bucket cups, which are used for scooping, transporting, and dumping the product are exempt as industrial tools, as provided by KRS 139.470(11)(a)2c.

The exemption for industrial supplies and tools is provided by KRS 139.470 (11) (a) 2(b) and 2(c), which states as follows:

- b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
- c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.

It is the Cabinet's position that all tangible personal property items at issue were purchased and used by the taxpayer to maintain, restore, replace or repair equipment and machinery or to repair industrial tools, which by definition are taxable repair parts. In accordance with KRS 139.470(11)(b), as noted below, there is no exemption for repair, replacement or spare parts.

"Repair, replacement, or spare parts" are specifically excluded from the industrial tool exemption by KRS 139.470 (11) (b), which states as follows:

It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170.

KRS 139.170 (4) defines repair parts as:

"Repair, replacement, or spare parts" means 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.

Based upon the foregoing, the information supplied with the protest and supporting statement, the Revenue Cabinet has determined that the remaining sales and use tax audit assessment totaling \$██████████ (plus applicable interest charges) is deemed a legitimate liability of ██████████ Company, due the Commonwealth.

### 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, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and laws in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

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



GEORGE D. RENFRO  
Assistant Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED