



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.
Commissioner

In the matter of:

[REDACTED], INC.

and

[REDACTED] CORPORATION

Contact: [REDACTED]
Corporation

Contact: [REDACTED]
Inc.

FINAL RULING NO. 2008-03
January 15, 2008

Sales Tax Refund Request
Periods July 1, 2003 through September 30, 2003

FINAL RULING

[REDACTED], Inc. ("[REDACTED]") currently has an outstanding sales tax refund request totaling \$[REDACTED] plus applicable interest for the period July 1, 2003 through September 30, 2003. The refund request is for tax paid by [REDACTED] Corporation ("[REDACTED]") on its purchase from [REDACTED] of [REDACTED] and [REDACTED] equipment for incorporation into [REDACTED]'s Storm Water Treatment Facility project for the [REDACTED] Kentucky International Airport located in [REDACTED] County, Kentucky.

[REDACTED] is a regional general contractor that engages in a variety of construction projects, including highways, commercial and institutional buildings, heavy industrial process plants and waste and water treatment plants.

██████████ (and ██████████) assert that the purchase (or sale) in question was exempt from tax under KRS 139.470(7) as a sale to a governmental agency of the Commonwealth. For the reasons that follow, this contention is without merit and the refund request has been properly denied by the Department of Revenue.

“All sales to contractors, subcontractors, builders, or owners of building materials, fixtures and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling or repairing such structure or improvement are subject to the sales and use tax at the time of sale to the contractor, subcontractor, builder or owner.” 103 KAR 26:070 § 1. “The term ‘improvements to real estate’ as used in this administrative regulation includes, but is not limited to buildings, roads, sewers, dams, railroads and fences.” Id. at § 2(5). “A contractor may not claim that the purchase of materials or fixtures is not subject to the tax because the property is to be used in fulfilling a contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.” Id. at § 3.

The ██████████ and ██████████ equipment was incorporated or fabricated by ██████████ into a structure or improvement to real estate. Tax therefore properly applied to ██████████'s purchase of this equipment from ██████████.

██████████ was thus the consumer and not the seller or retailer of the equipment in question. No exemption such as KRS 139.470(7) applied to its purchase of the equipment from AAS. 103 KAR 26:070 §§ 1 and 3. It is noteworthy that ██████████ had not applied for and received a Retail Sales and Use Tax Permit, but had instead been issued only a Consumer's Use Tax Return number by the Department.

Based upon the foregoing, the refund request in question was 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, 1268 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, 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 himself and other individual corporation, trust, estate or partnership before the board; and
- (3) An attorney which 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



Douglas M. Dowell
Attorney Manager
Office of Legal Services for Revenue

cc: [REDACTED] & Associates
Attn: [REDACTED], Senior Tax Advisor
[REDACTED]

CERTIFIED MAIL
RETURN REQUEST REQUESTED