



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

██████████, LLC

Contact: ██████████, LLC

Attn: ██████████

FINAL RULING NO. 2012-19
March 14, 2012

Sales and Use Tax Assessments
for the Period
September 1, 2004 through April 30, 2008

FINAL RULING

The Kentucky Department of Revenue has outstanding sales and use tax assessments totaling \$ ██████████ against ██████████, LLC ("██████") for the audit period September 1, 2004 through April 30, 2008. The following schedule reflects the amount of outstanding tax and applicable interest accrued to date:

Period	Tax	Interest as of 3/14/2012	Total
09/01/04 - 12/31/04	\$ ██████████	\$ ██████████	\$ ██████████
01/01/05 - 12/31/05	\$ ██████████	\$ ██████████	\$ ██████████
01/01/06 - 12/31/06	\$ ██████████	\$ ██████████	\$ ██████████
01/01/07 - 12/31/07	\$ ██████████	\$ ██████████	\$ ██████████
01/01/08 - 04/30/08	\$ ██████████	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████	\$ ██████████

██████████ is a ready mix concrete manufacturer that also has dredging operations on the ██████████ River. At issue is whether various items of equipment, supplies and other property used in this dredging operation qualify for the exemption from sales and use tax set forth in KRS 139.483, which states:

The taxes imposed under the provisions of this chapter shall not apply to the sale of, or the storage, use, or other consumption of, ships and vessels, including property used in the repair or construction of, supplies and fuel consumed in the operation of, and supplies consumed by crew members aboard such ships and vessels which are used principally in the transportation of property or in the conveyance of persons for hire.

An exemption from taxation must be narrowly construed, with any doubts resolved against its application; moreover, a taxpayer claiming an exemption must establish that all statutory requirements are met. 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); KRS 139.260. The exemption set forth in KRS 139.483 does not exempt all ships and vessels and fuel, supplies and other property used or consumed in the repair, construction or operation of those ships and vessels. Instead, the ships and vessels must also be used principally in the transportation of property or in the conveyance of persons for hire.

The items in question primarily consist of 1) equipment referred to as a dredge, which ██████████ describes as machinery or an apparatus that sits on a barge on the river, removing sand and gravel from the riverbed, processing it, and loading it onto barges to be taken to the shore for unloading and stockpiling and 2) various supply items, equipment and other property used or consumed in the repair or operation of the dredge or in ██████████'s dredging operations.

These items do not qualify for the exemption set forth in KRS 139.483 primarily because they are not used principally in the transportation of property or the conveyance of persons for hire. They are instead used in the process of dredging sand and gravel on or from the river.

This conclusion is supported by the Kentucky Supreme Court's decision in Popplewell's Alligator Dock No. 1 v. Revenue Cabinet, *supra*. In that case, an exemption was sought pursuant to KRS 139.483 for purchases of fuel used to operate houseboats rented for recreational and vacation purposes. The Supreme Court held that the houseboats were not used principally in transportation of property or in the conveyance of persons for hire, but "were used principally to provide lodging to vacationers and for their recreational purposes." 133 S.W.3d at 456. The same holding and reasoning apply here: the dredges and other items in question were used in ██████████'s dredging operations and not merely to transport property.

██████████ has therefore not established, nor can it establish, that it satisfied all the requirements of the tax exemption it claims to be applicable to its purchase, use, storage or other consumption of the items in question.

Based upon the foregoing, outstanding sales and use tax assessments totaling \$ ██████████ (plus applicable interest) are legitimate liabilities of ██████████ LLC due the Commonwealth of Kentucky.

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;

██████████, LLC

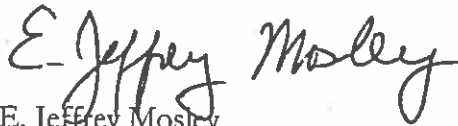
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3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; 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



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The first part of the paper discusses the importance of the research and the objectives of the study. It then proceeds to a literature review, followed by a description of the methodology used. The results of the study are presented in the next section, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The research was conducted in a laboratory setting, using a sample of 100 participants. The participants were divided into two groups, each receiving a different treatment. The first group received a placebo, while the second group received the active treatment. The results of the study showed that the active treatment was significantly more effective than the placebo.

The findings of this study have important implications for the treatment of the condition. They suggest that the active treatment should be used as the first-line treatment for patients with the condition. Further research is needed to confirm these findings and to explore the long-term effects of the treatment.

The study was funded by the National Institutes of Health. The authors would like to thank the participants for their contribution to the study and the staff of the laboratory for their assistance.