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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], LLC

Contact:

[REDACTED] LLC

FINAL RULING NO. 2014-18
May 8, 2014

Denial of Pollution Control Exemption Certificate # [REDACTED]

FINAL RULING

The Kentucky Department of Revenue ("DOR") has denied an application for a pollution control tax exemption certificate submitted by [REDACTED], LLC ("[REDACTED]") for the category of air pollution as part of its remediation contract services to the US Department of Energy at the [REDACTED]. [REDACTED] has protested this denial.

An exemption from sales and use tax is provided in KRS 139.480(12) for "[p]roperty which has been certified as a pollution control facility as defined in KRS 224.1-300." The certification referred to in this statutory language consists of a pollution control tax exemption certificate from the Department issued in accordance with KRS 224.1-310. As noted above, the Department has denied [REDACTED]'s application for a certificate for air monitoring equipment.

[REDACTED] applied for a Pollution Control Tax Exemption Certificate for its Environmental Monitoring Equipment based on the fact that the equipment was part of its broader radiological air monitoring requirements with the US Department of Defense to support its implementation of US Department of Energy Order 458.1. The Department denied this request because the monitoring equipment does not directly eliminate or reduce air pollution.

At issue is whether [REDACTED]'s application for a pollution control tax exemption certificate was properly denied.

The eligibility for a pollution control tax exemption certificate is based upon the following language of KRS 224.1-300(1)(a) defining an air “pollution control” facility as:

Any property designated, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof which renders air harmful or inimical to the health of persons or to property within this commonwealth.

It is well settled that an exemption from taxation such as the one claimed here by ██████████ is to be strictly construed, with all doubts resolved against the exemption’s application, and will not be presumed or implied, but must instead be clearly stated. Popplewell’s Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 461 (Ky. 2004); LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472, 475 (Ky. 2004). The burden rests squarely upon the taxpayer claiming an exemption to establish that it is entitled to the exemption and that all of the exemption’s requirements are satisfied. Id.; Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 937, 941 (Ky. App. 1989).

██████████ has not met its burden of establishing its entitlement to a pollution control tax exemption certificate. ██████████ contends that ambient environmental air monitoring is required to control/reduce radionuclide air emissions. However, the controlling exemption statute requires the equipment in question to be for the primary purpose of eliminating or reducing emissions, not monitoring or detecting emissions.

To properly document the equipment’s function of eliminating or reducing emissions, Kentucky Regulation 103 KAR 30:260, Section 2(1)(c) requires the applicant to provide a detailed explanation of how the property to be installed functions primarily to control pollution. ██████████’s argument for the pollution control exemption rests upon its assertion that as part of its Environmental Radiation Protection Program (ERPP) “detectable results are shared promptly with other site contractors and DOE to ensure actions to achieve ALARA [as low as reasonably achievable] are implemented in a timely manner to minimize potential exposure.”

In reality, the primary purpose of this equipment is to monitor emissions at the work site. Rather than eliminating or reducing the emissions, the equipment detects fugitive and diffuse radionuclide air emissions after they have occurred. The equipment itself does not physically or chemically remove pollutants from the emissions stream. Thus, the equipment does not qualify for the tax exemption as a pollution control facility designed, constructed or installed as a component part of a commercial or industrial facility for the primary purpose of elimination air pollution.

Accordingly, the Department has correctly denied [REDACTED]'s application for a pollution control exemption certificate.

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.

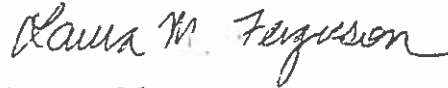
██████████ LLC

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You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET

A handwritten signature in cursive script, appearing to read "Paula M. Ferguson".

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[REDACTED]

[REDACTED]