

██████████ was audited for the period January 1, 2007 through December 31, 2010 and was initially assessed \$██████████. ██████████ timely protested contending that the capital items assessed were exempt purchases for new and expanded industry under KRS 139.480(10). ██████████ contended that certain supply purchases were used directly in the production process and have a useful life of less than one year and therefore are exempt under KRS 139.470(11)(a) 2. ██████████ provided sufficient supporting documentation to warrant adjustment to a portion of the capital items in the assessment to the amount shown in the schedule above.

DOR requested documentation necessary to address ██████████'s remaining liability.

At issue:

1. Whether the remaining capital purchases are exempt machinery for new and expanded industry under KRS 139.480(10).
2. Whether ██████████ has met the supporting statement requirement of KRS 131.110(1) with respect to the consumable supply purchases portion of the audit assessment that remains under protest.

Issue 1. In letter dated ██████████, 2014, ██████████ submitted documentation concerning the remaining capital purchases claiming the information supported the criteria for exemption under new and expanded industry which excludes repair, replacement, or spare parts of any kind.

According to Kentucky Regulation 103 KAR 30:120, the criteria for the machinery for new and expanded industry exemption are as follows:

- (1) It must be machinery.
- (2) It must be used directly in the manufacturing process.
- (3) It must be incorporated for the first time into plant facilities established in this state.
- (4) It must not replace other machinery. New machinery purchased to replace other machinery in the plant is subject to tax unless the new machinery performs a different function, manufactures a different product, or has a greater productive capacity, measured by units of production, than the machinery replaced. Modification of machinery to perform a different function or manufacture a different product qualifies for exemption.

██████████ failed to substantiate that the equipment and machinery at issue meets the four criteria for the new and expanded industry exemption as required. DOR found that the information provided as support had no relevance to the protested liability and could not be considered as valid supporting documentation.

Issue 2. DOR requested documentation necessary to address the protested issue concerning certain supply purchases made by ██████████ that they contended were exempt industrial tools or supplies used directly in the production process with a useful life of less than one year.

Requests were made in letters dated ██████████, 2014, ██████████, 2014, and ██████████ 2014. ██████████ has failed to provide any documentation that would warrant further reductions. The DOR's assessments are presumed valid and correct, with the burden resting upon the taxpayer, in this case ██████████, to prove otherwise. Hahn v. Allphin, 282 S.W.2d 824 (Ky. 1955). Furthermore, the burden of proof rests upon ██████████ to prove that an exemption applies and all applicable statutory requirements are satisfied. Epsilon Trading Co., Inc. v. Revenue Cabinet, 775 S.W.2d 037 (Ky. App. 1989); KRS 139.260.

██████████ has not met its burden of proof in this matter. It has failed to substantiate its claims that tax assessed on certain purchases were exempt transactions under KRS 139.470(11)(a) 2. as industrial tools or supplies used directly in the production process with a useful life of less than one year. ██████████ has not provided any information that would warrant setting aside the assessment of tax for these transactions.

As indicated above, a penalty has been assessed pursuant to KRS 131.180(2) because of ██████████'s failure to have timely paid at least 75% of the tax determined to be due by the DOR. ██████████ has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Therefore, the outstanding sales and use tax assessment totaling \$ ██████████ (plus applicable interest and penalties) is a legitimate liability of ██████████, Inc. 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;
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,
FINANCE AND ADMINISTRATION CABINET


Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: [REDACTED] PLLC

Attn: [REDACTED]