COMMONWEALTH OF KENTUCKY
BOARD OF TAX APPEALS
FILE NO. K08-R-21

TRACTOR SUPPLY COMPANY **APPELLANT**

v. **ORDER NO. K-20813**

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE **APPELLEE**

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This appeal is before the Board, filed by taxpayer, Tractor Supply Company, from a final order of the Department of Revenue (Dept.) Final Ruling dated September 2, 2008. This is a Kentucky sales and use tax case concerning the primary question of whether TSC's counter tickets are valid exemption and resale certificates, and is before the Board for the purpose of rendering a final Order. The Board having considered the record, held an extensive two-day evidentiary hearing, and having heard the arguments of counsel at the hearing and on Brief, renders the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The Appellant, Tractor Supply Company ("TSC") is a farm supply store chain with stores in Kentucky and other states, including Ohio. For decades, TSC stores have sold agricultural and farming items and supplies as well as other items to its customers, who are primarily farmers, but also resellers, tax-exempt organizations and others.

TSC had the following detailed point-of-sale system that identified, tracked and documented tax-exempt items. When sales took place, applicable sales tax was applied unless the customer represented to the cashier that he was a farmer, a reseller or otherwise tax exempt-

entity entitled to purchase goods qualifying as exempt. For each customer's initial tax-exempt purchase, the system prompted the cashier to require the customer to provide his name, address, phone number, sales tax number (if applicable) and the customer type, e.g., agricultural (for a farmer) or resale, etc. Only customers set up in the system as being able to make tax-exempt purchases could make such purchases.

For each tax-exempt sale, the TSC cashier then ran a blank counter ticket, designated as a "Certificate of Exemption," which included a "General Exemption Statement," through the cash register which put on all customer and transaction information on it. Additional data printed on the form included: TSC's name and store address; the customer's name and address, including the state; each item purchased; date and text denoting that the items were purchased for an exempt agricultural purpose, resale or other exemption. The cashier then gave the counter ticket to the customer to sign for the sole purpose of validating and documenting their sales tax exemption status and the exempt nature of each item. If the customer refused to sign it, the cashier voided the sale; the customer could then decide to make the purchase and pay sales tax or choose not to make the purchase.

The Appellee, Department of Revenue ("KDOR") has recognized that non-KDOR forms can qualify as resale certificates. KDOR has previously audited TSC's Kentucky stores, and approved counter tickets for use in lieu of KDOR exemption and resale certificates forms. The KBTA strongly suggests that TSC and KDOR agree on language used on TSC's computer generated resale certificates in the future.

TSC obtained signed counter tickets from its customers, for all sales items at issue here.

As to purchases of exempt items by TSC's farmer customers, the items sold to farmers and designated as exempt pursuant to agricultural-related exemptions listed on the counter tickets at issue could be used and in fact were used by farmers exclusively in their agricultural businesses in Kentucky.

During the tax periods August 1, 1999 through July 31, 2003 ("Audit Period"), KDOR identified a sample of 855 items, accepted counter tickets as agricultural exemption certificates and resale certificates and removed corresponding items from the sample. KDOR extrapolated the remaining sample items to compute alleged tax due and issued sales tax assessments. TSC submitted a timely Protest. After a second field audit, KDOR accepted more counter tickets and issued revised assessments. TSC timely protested the revised assessments and exhausted all required administrative steps. KDOR issued its Final Ruling affirming its revised sales tax assessments on the sole basis that, "It is the Department's position that TSC's signed counter tickets are not valid exemption certificates in accordance with KRS 139.260, KRS 139.270, KRS 139.280 and KRS 139.490." TSC timely filed its Petition of Appeal with the Board.

CONCLUSIONS OF LAW

In making a determination as to whether counter tickets must be treated as valid exemption and resale certificates, substance, not "form" controls. See Revenue Cabinet v. Babcock & Wilcox Co., 203 S.W. 3d 149, 156 (Ky. App. 2005). Further, satisfaction of a directory provision requires only substantial compliance. See Knox County v. Hammons, 129 S.W.3d 839, 842 (Ky. 2004) (citing Skaggs v. Fyffe, **266** Ky. 337, 98 S.W. 2d 884 (Ky. 1936));

Bd . of Barbers & Beautician Examiners v. Mayo State Vocational Sch., 259 S.W.452 (Ky. 1953). Accordingly, "every slight departure" from a directory provision here should not invalidate the treatment of a "whole" counter ticket as an exemption certificate or a resale certificate. See Skaggs, 98 S.W. 2d at 886.

Obviously, the General Assembly intended the requirements for exemption certificates [KRS 139.490] and resale certificates [KRS 139.280] to be directory as such statutory direction was given with a view to securing proper or orderly procedure; thus, substantial, not exacting, compliance with their provisions is all that the law requires. For the reasons set forth below, we conclude that the counter tickets substantially comply with the statutory requirements for exemption and resale certificates, and therefore, must be treated as such.

The clear text of KRS 139.490 simply requires that exemption certificates contain only; [i] a written certification from the purchaser to the seller that "the property purchased will be used in a manner entitling the seller to exclude from the computation of the sales tax the gross receipts from the sale;" [ii] the purchaser's signature and [iii] retention in a file for at least four years. KRS 139.490; see also KRS 139.720.

The counter tickets stipulated to by the parties and admitted into evidence meet these requirements as each contains: [i] a "Certificate of Exemption," a "General Exemption Statement" along with other information printed on the form as to items purchased and the use thereof (e.g., "Agricultural," "Farm Machinery," etc.) which, taken together, provides a written certification from the purchaser that the items purchased will be used in a manner entitling them to an agricultural exemption that is [ii] signed by the purchaser and [iii] has been maintained by

TSC for at least four years. Thus, under KRS 139.490, TSC's counter tickets constitute exemption certificates which prove that the sales items at issue were exempt from tax. See Commonwealth v. Nelson, 841 S.W.2d 628, 631 (Ky. 1992). We are not without guidance on this issue, as our sister state, Ohio, has reviewed TSC's counter tickets in the context of Ohio's similar agricultural exemption from sales tax, and upheld the validity of its counter tickets. See Tractor Supply Co. v. Lindley, 364 N.E. 2d 31, 32-33 (Oh. 1977);

Further, the sale to Country Lakes Christian Retreat, a 501(c)(3) non-profit under the Internal Revenue Code of 1986, as amended **,** was tax-exempt. See KRS 139.490; KRS 139.495; KRS 139.470(10); Ind. Code Section 6-2.5-5-25 & 6-2.5-5-21(b)(1)(B); Ind. Admin. Code 2.2-5-55.

As to resale certificate, KRS 139.280(1) requires that these meet the following requirements: **"(**1)…bear the name and address of the purchaser; (2) indicate the number of the seller's permit issued to the purchaser for resale and (3) indicate the general character of the property sold by the purchaser in the regular course of business."

Some combination of a purchaser's name, address and permit number is sufficient to substantially comply with the first two requirements. See Chelsea Moore Co. v. Revenue Cabinet, File Nos. K88-R-12 and K88-R-16, Order No. K-12887 (KBTA 1989) ("Since Revenue has access to these permit numbers, the invoices substantially comply with 103 KAR 25:100 and constitute a receipt as [statutorily] defined…").

When used as a resale certificate, a counter ticket provides this information because it contains the purchaser's name and address; additionally, permit numbers are available as TSC

also maintains them in its point-of-sale system. As a counter ticket operates as a single purchase certificate, rather than a blanket certificate, it also discloses the general character of tangible personal property sold by the purchaser in the regular course of business by itemizing those items purchased for resale. See 103 KAR 31:111 Section 4. Resale certificates are further required to be only substantially in a form as KDOR may prescribe. See KRS 139.280(2); 103 KAR 31:111 Section 3-4. Resale certificates are not required to be on a KDOR form. Id. In this regard, KDOR has accepted non-KDOR certificate forms, including taxpayer created purchase orders as resale certificates. Although "form-type" minor differences exist between the resale certificate form prescribed by KDOR in 103 KAR 31:111 Section 3-4 and a counter ticket used as a resale certificate, these are immaterial. Therefore, we conclude that TSC's counter tickets contain each prescribed element and thus meet KRS 139.280's requirements.

We also conclude that TSC accepted property completed counter tickets as resale certificates, maintained them in a file, and determined that either the purchases at issue were of the type normally offered by the purchaser for sale or were reasonably undeterminable so that TSC met the statutory standard of "good faith" set forth in KRS 139.270(2).

Accordingly, we conclude that TSC's acceptance and retention of counter tickets for the sale items in dispute has met the statutory standards for its "good faith" acceptance of exemption certificates [KRS 139.490] and resale certificates [KRS 139.270(2)] so that TSC has been relieved of its burden of proof under KRS 139.260. Moreover, TSC's methodical system for verifying and documenting the validity of each and every tax-exempt sale via its point-of-sale system and counter ticket process provides additional proof that such sales were tax-exempt. We

further hold that the items in dispute were exempt under KRS 139.480 because they were agricultural items used in the business of farming, based on the unrefuted testimony of Vanessa Moore, a farmer and TSC Store Manager, and the documentary proof of record.

As we have held for TSC, we decline to address the issues regarding the invalidity of KDOR's administrative regulations, TSC's allegations of constitutional and statutory violations and other matters. However, we note that TSC properly preserved all of these issues. We also note that KDOR agreed to abate all amnesty penalties and fees and that TSC agreed to withdraw its claim for attorneys' fees for all legal work performed concerning this tax dispute, if awarded by another forum. Finally, we find the Department's arguments not addressed above to be without merit.

JUDGMENT AND ORDER

The Kentucky Board of Tax Appeals orders: (1) the Department's September 2, 2008 Final Ruling is dismissed and set aside; (2) TSC is relieved of the taxes and interest at issue and in dispute in the Final Ruling; and (3) all amnesty penalties and fees are dismissed and set aside as agreed to by the parties.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a

place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER
AND MAILING: May 19, 2010

FULL BOARD CONCURRING.
KENTUCKY BOARD OF TAX APPEALS

Nancy Mitchell
Board Member

Lanola Parsons
Board Member