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Major Moment for Kentucky Manufacturers as Supreme Court Determines the Taxability of Machinery, Equipment and Supplies

While the Kentucky General Assembly debates passing significant tax reform legislation during the 2022 Regular Session[1], the Kentucky Supreme Court recently agreed to review a case to finally decide the taxability of machinery, equipment and supplies, which may have a much bigger impact on the manufacturing community and marks a major moment for the industry.

As detailed in our prior blog article, two recent Kentucky court decisions have caused confusion and concern regarding the taxability of manufacturing, industrial processing and recycling machinery, equipment and supplies — specifically, the 2019 decision in *Novelis Corp*. and the July 2021 decision in *Century Aluminum*.[2] Just recently on February 16, 2022, the Kentucky Supreme Court surprised many in the tax and manufacturing industry by granting discretionary review for the latter *Century Aluminum* case.

As discussed in our prior blog article, there appears to be a direct conflict between the lower court holding in *Novelis Corp*., which agreed the taxpayer's refractory materials and related manufacturing/processing supplies were exempt from Kentucky sales and use tax, and the unpublished (i.e., non-precedential) Court of Appeals' decision in *Century Aluminum*, which sided with the Department of Revenue that similar manufacturing/industrial supplies and equipment were taxable repair and replacement parts. These decisions provided more confusion than certainty in the decades-long battle to determine when most manufacturing machinery, equipment, tools and supplies are exempt or taxable under Kentucky law.

The Kentucky Supreme Court's recent agreement to review this issue is significant as it could decide, once and for all, the proper interpretation of Kentucky manufacturing exemptions. A favorable decision by the Supreme Court to reverse the Court of Appeals' decision in *Century Aluminum* (likely following the reasoning in the *Novelis* case) would be a substantial victory for Kentucky manufacturers, industrial processors and recyclers, and provide a major boost to the outside world's perception of Kentucky being a good place for these industries to locate and expand. On the flip side, the Supreme Court upholding the Court of Appeals' decision in favor of the Department of Revenue's narrow review of the manufacturing exemptions would be a major hit to the industry and to Kentucky's economic environment as well. The latter scenario could lead to the General Assembly reviewing these statutory exemptions in the very near future.

Regardless of the outcome, a major moment is now upon us, with everyone in the manufacturing, industrial processing and recycling industry watching as it unfolds later this year.

Please reach out to the authors of this article, Mark Sommer, Daniel Mudd and Elizabeth Mosley, if you have questions or concerns on this issue. You can also continue to follow the Frost Brown Todd Tax Law Defined blog for more updates.

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[1] We will provide more updates on this tax legislation as it continues to be debated on the House and Senate Floors, including 2022 House Bill 8 which just passed the House on March 4, 2022, and will now be considered by the Senate along with 2022 Senate Bill 194 and others before the end of the 2022 Regular Session in April.

[2] *See Novelis Corp. v. Department of Revenue*, 16-CI-00189 (Madison Cir. Ct, July 2, 2019); *Century Aluminum v. Dep't of Revenue*, No. 2020-CA-0301-MR (Ky. App. 2021) (unpublished), discr. review granted, 2021-SC-0300 (Feb. 16, 2022).