CHAPTER 89

(HB 448)

AN ACT relating to property taxes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 96.810 is amended to read as follows:

(1) The board shall devote all moneys derived from any source other than the issuance of bonds to or for the payment of all operating expenses; bond interest and retirement and sinking fund payments; the acquisition and improvement of the electric plant; contingencies; other obligations incurred in the operation and maintenance of the electric plant and the furnishing of electric service; the state, any county, any school district, any municipality, and any other special taxing district in which the board operates, of the same respective amounts as provided in KRS 96.820, or any other additional amounts which the board pursuant to its contract with the Tennessee Valley Authority or other governmental agencies collects as tax equivalents for any taxing jurisdiction if the board contracts with the Tennessee Valley Authority or any governmental agency for the purchase and resale of electrical energy, or if the board does not contract with the Tennessee Valley Authority or any other governmental agency for the purchase or resale of any electrical energy and if it has met all obligations imposed on it by KRS 96.550 to 96.900 it may at the end of any twelve (12) months ending June 30 transfer any surplus to the general fund of the municipality which authorized it; the redemption and purchase of electric plant bonds, in which case the bonds should be canceled; the creation and maintenance of a cash working fund; and the payment of an amount to the general funds of the municipality.

(2) After the establishment of proper reserves, if any, and after complying with the above provisions of this section, any surplus of proceeds shall be devoted solely to the reduction of rates. The equity of the municipality contracting with the Tennessee Valley Authority or other governmental agency for the purchase and resale of electrical power or energy shall be the purchase price of the electric plant, less the face value of outstanding bonds, or, if there is no purchase price, the original cost of the plant as defined by the Federal ***Energy Regulatory*** ~~[power]~~ Commission, less accrued depreciation, less the face value of the outstanding bonds. The payment of bonds or the acquisition or improvement of property from the receipts derived from electric service or any other operation of the board shall not be considered to increase the equity or investment of the municipality.

Section 2. KRS 96.820 is amended to read as follows:

(1) For the purposes of this section, unless the context requires otherwise:

(a) "Taxing jurisdiction" shall mean each county, each school district, each municipality, and each other special taxing district located within the state.

(b) "State" shall mean the Commonwealth of Kentucky.

(c) "Tax equivalent" shall mean the amount in lieu of taxes computed according to this section which is required to be paid by each board to the state and to each taxing jurisdiction in which the board operates and required by subsection (11) of KRS 96.570 to be included in resale rates.

(d) "Tax year" shall mean the twelve (12) calendar-month period ending with December 31.

(e) "Current tax rate" shall mean the actual levied ad valorem property tax rate of the state and of each taxing jurisdiction which is applicable to all property of the same class as a board's property subject to taxation for the tax year involved.

(f) "Book value of property" or "book value of property owned by the board" shall mean the sum of:

1. The original cost (less reasonable depreciation or retirement reserve) of a board's electric plant in service on December 31 of the immediately preceding calendar year located within the state, used and held for use in the transmission, distribution, and generation of electric energy, and

2. The cost of the material and supplies owned by a board on December 31 of the immediately preceding calendar year. For the purpose of this definition, "electric plant in service" shall mean those items included in the "electric plant in service" account prescribed by the Federal ***Energy Regulatory*** ~~[Power]~~ Commission uniform system of accounts for electric utilities, and "material and supplies" shall mean those items included in the accounts grouped under the heading "material and supplies" in the said system of accounts.

(g) "Adjusted book value of property" or "adjusted book value of property owned by the board" shall mean the book value of property owned by the board excluding manufacturing machinery as interpreted by the Revenue Cabinet for franchise tax determination purposes.

(h) The "adjustment factor" shall be one hundred twenty-five percent (125%) for the tax year 1970. For each tax year thereafter, it shall be the duty of the Revenue Cabinet to compute the adjustment factor for that tax year as follows: For each five (5) percentage points or major fraction thereof by which the adjustment ratio for electric utility property for the immediately preceding tax year exceeded or was less than one hundred sixteen percent (116%), five (5) percentage points shall be added to or subtracted from one hundred twenty-five percent (125%). For the purposes of this computation, "adjustment ratio for electric utility property" shall mean the ratio of total assessed value to total property value for all public service corporations distributing electric energy to more than fifty thousand (50,000) retail electric customers within the state. "Total assessed value" shall mean the total actual cash value assigned by the Revenue Cabinet for ad valorem property tax purposes to the property of such corporations located within the state (properly adjusted for property under construction). "Total property value" shall mean the sum of:

1. The depreciated original cost of the total utility plant in service of such corporations within the state, and

2. The book value of material and supplies of such corporations located within the state, both as derived from published reports of the Federal ***Energy Regulatory*** ~~[Power]~~ Commission, or in the absence thereof, from information provided to the Revenue Cabinet by such corporations.

(i) "Electric operations" shall mean all activities associated with the establishment, development, administration, and operation of any electric system and the supplying of electric energy and associated services to the public, including without limitation the generation, purchase, sale, and resale of electric energy and the purchase, use, and consumption thereof by ultimate consumers.

(2) It shall be the duty of each board, on or before ***April 30***~~[March 31]~~, to certify to the Revenue Cabinet the book value of property owned by the board and the adjusted book value of property owned by the board and located within the state and within each taxing jurisdiction in which the board operates. A copy of the certification shall also be sent by the board to each such taxing jurisdiction. The book value of property and adjusted book value of property shall be determined, and the books and records of the board shall be kept in accordance with standard accounting practices, and the books and records of each board shall be subject to inspection by the Revenue Cabinet and by representatives of the affected taxing jurisdictions and to adjustment by the Revenue Cabinet if found not to comply with the provisions of this section. Upon the receipt of the required certification from a board, the Revenue Cabinet shall make any inspection and adjustment, hereinabove authorized, as it deems necessary, and no earlier than September 1 of each year the Revenue Cabinet shall certify to the board and to the county clerk of each county in which the board operates the book value of property owned by the board and the adjusted book value of property owned by the board, located within each taxing jurisdiction in which the board operates and within the state. At the same time, the Revenue Cabinet shall certify to the board and to the county clerk the adjustment factor for the tax year. The county clerk shall promptly certify the book value of property, the adjusted book value of property, and the adjustment factor certified by the Revenue Cabinet, to the respective taxing jurisdiction in which the board operates.

(3) (a) Each board shall pay for each tax year, beginning with the tax year 1970, to the state and to each taxing jurisdiction in which the board operates, a tax equivalent from the revenues derived from the board's electric operations for that tax year, computed according to this subsection.

(b) The tax equivalent for each tax year payable to the state shall be the total of:

1. The book value of the property owned by the board within the state, multiplied by the adjustment factor, multiplied by the current tax rate of the state, less thirty cents ($0.30), plus

2. The state's portion of the amount payable under paragraph (d) of this subsection.

(c) The tax equivalent for each tax year payable to each taxing jurisdiction in which the board operates shall be the total of:

1. The adjusted book value of property owned by the board within the taxing jurisdiction, multiplied by the adjustment factor, multiplied by the current tax rate of the taxing jurisdiction; provided, however, for the purpose of this calculation the tax rate for school districts shall be increased by thirty cents ($0.30), plus

2. The taxing jurisdiction's portion of the amount payable under paragraph (d) of this subsection.

(d) For purposes of this subsection, "amount payable" shall mean four-tenths of one percent (0.4%) of the book value of property owned by the board located within the state. The state shall be paid the same proportion of the amount payable as the payment to the state under subparagraph 1 of paragraph (b) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1 of paragraph (b) and subparagraph 1 of paragraph (c) of this subsection. Each taxing jurisdiction in which the board operates shall be paid the same proportion of the amount payable as the payment to the taxing

jurisdiction under subparagraph 1 of paragraph (c) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1 of paragraph (b) and subparagraph 1 of paragraph (c) of this subsection. Under the regulations the Revenue Cabinet may prescribe, upon the board's receipt from the state and taxing jurisdictions of notice of the amount due under subparagraph 1 of paragraph (b) and subparagraph 1 of paragraph (c) of this subsection, the board shall compute the portion of the amount payable which is due the state and each taxing jurisdiction in which the board operates.

(e) Payment of the tax equivalent under this section for each tax year shall be made by each board to the state within thirty (30) days after receipt by the board of the certification from the Revenue Cabinet required by subsection (2) of this section and shall be made directly to each taxing jurisdiction in which the board operates within thirty (30) days from the date of the certifications by the county clerk required by subsection (2) of this section. The state and each taxing jurisdiction in which a board operates shall have a superior lien upon the proceeds of the sale of electric energy by that board for the amounts required by this section to be paid to it.

(4) Except as hereinafter provided, the tax equivalents computed under this section shall be in lieu of all state, municipal, county, school district, special taxing district, other taxing district, and other state and local taxes or charges on the tangible and intangible property, the income, franchises, rights, and resources of every kind and description of any municipal electric system operating under KRS 96.550 to 96.900 and on the electric operations of any board established pursuant thereto, and the tax equivalent for any tax year computed and payable under this section to the state or to any taxing jurisdiction in which any board operates shall be reduced by the aggregate amount of any tax or charge within the meaning of this sentence which is imposed by the state, or by any taxing jurisdiction in which a board operates, on the board, the electric system, or the board's electric operations. Provided, however, that if any school district in which property of a board is located has elected, or does hereafter elect, to apply the utility gross receipts license tax for schools to all utility services as provided by KRS 160.613 through KRS 160.617, or as may hereafter be provided by other statutes, the amount of such utility gross receipts license tax shall not reduce, or in any manner affect, the amount payable to any such board or boards under the provisions of this section. It is the intent and purpose of this provision to eliminate all sums received by any such board or boards by reason of the utility gross receipts license tax from any computation of the amount payable under this section to any such board or boards, irrespective of the manner in which that payment is computed, so that, in no event, shall any sum received by any school district by reason of the utility gross receipts license tax reduce, directly or indirectly, the amount payable to such district under this chapter. Provided, further, that if the state shall levy a statewide retail sales or use tax on electric power or energy, collected by retailers of the energy from the vendees or users thereof, and imposed at the same rate or rates as are generally applicable to the sale or use of personal property or services, including natural or artificial gas, fuel oil, and coal as well as electric power or energy, the retail sales or use tax shall not be deemed to be a tax or charge within the meaning of the first sentence of this subsection, and the tax equivalent payable for the tax year to the state under this section shall not be reduced on account of such retail sales or use tax.

(5) (a) Notwithstanding subsection (3) of this section, until the first tax year in which the total of:

1. The tax equivalent payable to the state, or to any taxing jurisdiction in which the board operates, computed under subsection (3) of this section, plus

2. The additional amounts permitted to be paid to the state or taxing jurisdiction without deduction under the second and third sentences of subsection (4) of this section, exceeds the minimum payment to the state or taxing jurisdiction specified in paragraph (b) of this subsection, the tax equivalent for each tax year payable to the state or taxing jurisdiction shall be an amount equal to the minimum payment computed under paragraph (b) of this subsection.

(b) For purposes of this subsection, the minimum payment to the state or to any taxing jurisdiction in which the board operates shall mean an amount equal to the total of:

1. The largest actual payment made by the board pursuant to this section to the state or to the taxing jurisdiction for any of the tax years 1964, 1965, or 1966, plus

2. The state's or taxing jurisdiction's pro rata share of an amount equal to four-tenths of one percent (0.4%) of the increase since July 1, 1964, in the book value of property owned by the board within the state. For the purposes of this paragraph "pro rata share" shall mean the same proportion of the amount computed under this subparagraph as the largest actual payment in lieu of taxes made by the board to the state or taxing jurisdiction for the applicable tax year under subparagraph 1. of this paragraph represents of the total amount of the largest actual payments in lieu of taxes made by the board to the state and to all taxing jurisdictions in which it operated for any of the applicable tax years.

(c) The provisions of paragraph (e) of subsection (3) of this section shall apply to all payments required under this subsection.

(d) This subsection shall not be applicable for the first tax year specified in paragraph (a) of this subsection or for any tax year thereafter, except however, that tax year 1977 shall not be deemed as the "first tax year" as specified in paragraph (a) and this subsection shall continue to apply in such cases.

Section 3. KRS 100.324 is amended to read as follows:

(1) All other provisions of this chapter to the contrary notwithstanding, public utilities operating under the jurisdiction of the Public Service Commission, except as specified in KRS 100.987 and subsection (5) of this section, or the Department of Vehicle Regulation or Federal ***Energy Regulatory*** ~~[Power]~~ Commission, any municipally-owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.

(2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.

(3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.

(4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

(5) Every utility which proposes to construct an antenna tower for cellular telecommunications services or personal communications services within a county containing a city of the first class shall submit the proposal to the planning commission of the affected planning unit. The planning commission shall review the proposal in light of its agreement with the comprehensive plan and locally-adopted zoning regulations and shall, within sixty (60) days from the date the proposal is submitted, make its final decision and advise the utility in writing whether the proposed construction is in accordance with the comprehensive plan and locally-adopted zoning regulations. If the planning commission fails to issue a final decision within sixty (60) days, it is presumed to have approved the proposal, and may not later appeal a decision of the Public Service Commission under KRS 278.650(3). If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally-adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its final decision on the utility proposal, whichever occurs first.

Section 4. KRS 132.040 is amended to read as follows:

Each financial institution, as defined in KRS 136.500, shall file with the cabinet on or before ***March 1***~~[January 21]~~ of each year, a report setting forth the total amount of its deposits as of the preceding January 1 that are taxable in the name of the depositor under the laws of this state, and shall, on or before March 1 of each year, pay to the cabinet one-thousandth of one percent (.001%) of the amount of the deposits, and may charge to and deduct from the deposit of each depositor the amount of the tax paid on his behalf. Financial institutions shall have liens on the funds belonging to the respective depositors on which the tax has been paid. Any claim for taxes against the depositor by the financial institution paying the taxes shall be asserted within six (6) months after the payment of the taxes to the cabinet, and no claims or liens shall be asserted after that time.

Section 5. KRS 132.180 is amended to read as follows:

(1) Any person having custody of distilled spirits in a bonded warehouse or premises on the day as of which the assessment is made shall be liable for all taxes due thereon, together with all interest and penalties that may accrue. Any owner, proprietor, or custodian of such distilled spirits who pays the taxes, interest and penalties on the distilled spirits shall have a lien thereon for the amount paid, with legal interest from day of payment.

(2)~~[(a)]~~ Taxes on distilled spirits which are subject to the provisions of KRS 132.160(1)(a) shall become due and payable in the manner provided by KRS 134.020 except that taxes due the state shall be paid directly to the Revenue Cabinet.

~~[(b) Any owner or proprietor of a bonded warehouse or premises in which distilled spirits are stored upon which taxes have accrued who fails to pay the taxes and interest on distilled spirits within fifteen (15) days after they are due shall be deemed delinquent, and a penalty of eight percent (8%) of each year's taxes due on the distilled spirits shall attach. The officer authorized to collect the taxes shall immediately cause special proceedings to be instituted for the collection of the taxes with such interest and penalties as may be provided by law for the collection of delinquent taxes.]~~

Section 6. KRS 132.290 is amended to read as follows:

(1) Any real property which has not been listed for taxation, for any year in which it is taxable, by the time the board of assessment appeals completes its work for that year shall be deemed omitted property. Any personal property which has not been listed for taxation, for any year in which it is taxable, by ***the due date***~~[April 15]~~ of that year shall be deemed omitted property.

(2) All omitted property shall be assessed retroactively in the manner provided by law at any time within five (5) years from the date when it became omitted, but the lien thereby accruing on any such property, except real property, shall not prejudice the rights of bona fide purchasers acquired in the meantime.

(3) All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is ***paid***~~[prepared in accordance with KRS 133.230]~~.

(4) All omitted property not voluntarily listed shall be subject to a penalty of twenty percent (20%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is ***paid***~~[prepared in accordance with KRS 133.230]~~.

(5) When the property is assessed retroactively by action prosecuted in the manner provided by KRS 132.330 and 132.340, an additional penalty of twenty percent (20%) of the amount of the original tax, interest and penalty may be collected for the purpose provided in KRS 134.400 and paid into the State Treasury. All other penalties and interest shall be distributed in the same manner as the tax.

Section 7. KRS 132.360 is amended to read as follows:

(1) Any assessment of accounts receivable, notes, or bonds or other intangible or tangible personal property that were listed with the property valuation administrator or with the Revenue Cabinet as provided by KRS 132.220 may be reopened by the Revenue Cabinet

within five (5) years after the ***due*** date~~[as]~~ of ***the return***~~[which they were assessed]~~, unless the assessed value thereof is the face value in the case of accounts receivable and notes or the quoted value in the case of bonds, or has been established by a court of competent jurisdiction. If upon reopening the assessment the cabinet finds that the assessment was less than the fair cash value and should be increased, it shall give notice thereof to the taxpayer, who may within ***forty-five (45)***~~[thirty (30)]~~ days thereafter protest to the cabinet and offer evidence to show that no increase should be made. After the cabinet has disposed of the protest, the taxpayer may appeal from any such additional assessment as provided by KRS 131.110 and 131.340.

(2) Upon such assessment becoming final the cabinet shall certify the amount due to the taxpayer. The tax bill shall be handled and collected as an omitted tax bill, and the additional tax shall be subject to the same penalties and interest as the tax on omitted property voluntarily listed.

Section 8. KRS 136.140 is amended to read as follows:

(1) If a public service corporation, foreign or domestic, operates and conducts its business in other states as well as in this state, the report required by KRS 136.130 shall show the following additional facts: the cost and year acquired of the operating property operated, owned, or leased, including property under construction, property held for future use, and depreciation attributable thereto for the property in this state as of December 31; and such other facts as the cabinet may require.

(2) All public service corporations included in KRS 136.120 shall file with the report required by KRS 136.130 and this section a copy of all reports to their stockholders and a complete copy of their report to the federal regulating agency if their operations are interstate.

~~[(3) Companies assessed under subsection (4) of KRS 136.120 shall annually, between December 31 and March 31 following, make and deliver to the Revenue Cabinet a report verified by an officer of the corporation in such form as the cabinet may prescribe, showing the following facts: The name and principal place of business of the corporation; the kind of business engaged in; the cost of its rolling stock by types and the depreciation attributable thereto; the average age of the rolling stock by types; the rolling stock mileage made by the rolling stock in Kentucky and the rolling stock mileage made by the rolling stock everywhere for twelve (12) months next preceding December 31 of the year for which the report is required; and such other facts as the cabinet may require.]~~

Section 9. KRS 136.150 is amended to read as follows:

If any corporation fails to report as required by KRS 136.130 and 136.140 on or before ***April 30***~~[March 31]~~ of each year, ***or May 30 if the Revenue Cabinet has granted the corporation an extension,*** the Revenue Cabinet shall ascertain the required facts and values in such manner and by such means as it deems proper, at the cost of the corporation failing to make the report.

Section 10. Section 6 of this Act takes effect January 1, 2003.

Approved March 28, 2002