

CHAPTER 366**(HB 614)**

AN ACT relating to revenue and taxation.

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

Section 1. KRS 131.400 is amended to read as follows:

- (1) KRS 131.410 to 131.445 shall be known as and may be cited as the "Kentucky Tax Amnesty Act."
- (2) The Revenue Cabinet shall develop and administer a ~~one (1) time~~ tax amnesty program as provided in KRS 131.410 to 131.445.
- (3) As used in KRS 131.410 to 131.445, unless the context requires otherwise:
 - (a) "Cabinet" means the Revenue Cabinet.
 - (b) "Taxpayer" means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, **limited liability company, limited liability partnership**, or any other entity of any kind subject to any tax set forth in subsection (4) of this section or any person required to collect any such tax under subsection (4) of this section.
 - (c) "Account receivable" means an amount of state tax, penalty, **fee**, or interest which has been recorded as due and entered in the account records of the cabinet, or which the taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation which the taxpayer knows is being conducted by any governmental taxing authority, federal, state or local.
 - (d) "~~Final,]~~Due and owing" means an assessment which has become final and is owed to the Commonwealth due to either the expiration of the taxpayer's appeal rights pursuant to KRS 131.110 or, if an assessment has been appealed to the board of tax appeals, the rendition of a final order by the board or by any court of this Commonwealth. For the purposes of KRS 131.410 to 131.445, assessments that have been appealed to the board of tax appeals shall be final, due and owing fifteen (15) days after the last unappealed or unappealable order sustaining the assessment or any part thereof has become final.
- (4) Notwithstanding the provisions of any other law to the contrary, the tax amnesty program shall be conducted by the cabinet during the fiscal year ending June 30, **2003**~~[1989]~~, for a period of not less than sixty (60) days nor more than one hundred and twenty (120) days and shall apply to all taxpayers owing taxes, penalties, **fees**, or interest **subject to the administrative jurisdiction of the cabinet, with the exceptions of ad valorem taxes levied on real property pursuant to KRS Chapter 132, ad valorem taxes on motor vehicles and motorboats collected by the county clerks, and ad valorem taxes on personal property levied pursuant to KRS Chapter 132 that are payable to local officials**~~[administered by the cabinet under the provisions of KRS Chapters 131, 136, 137, 138, 139, 140, 141, 143, 143A, 224, 234, 243, 299, subtitles 3, 4 and 11 of Chapter 304 and omitted intangible property tax levied under Chapter 132]~~. The program shall apply to tax liabilities for taxable periods ending or transactions occurring **after December 1, 1987, but** prior to December 1, **2001**~~[1987]~~. Amnesty tax return forms shall be in a form prescribed by the cabinet.

Section 2. KRS 131.410 is amended to read as follows:

- (1) For any taxpayer who meets the requirements of KRS 131.420:
 - (a) For taxes which are owed as a result of the nonreporting or underreporting of tax liabilities or the nonpayment of any account receivable owed by an eligible taxpayer, the Commonwealth shall waive criminal prosecution and all civil penalties *and fees* which may be assessed under any KRS chapter *subject to the administrative jurisdiction of the cabinet*~~enumerated in subsection (4) of KRS 131.400~~ for the taxable years or periods for which tax amnesty is requested, plus *all*~~one-half (1/2)~~ of the interest as provided in subsection (1) of KRS 131.425.
 - (b) With the exception of instances in which the taxpayer and cabinet enter into an installment payment agreement authorized under subsection (3) of KRS 131.420, The failure to pay all taxes~~and interest~~ as shown on the taxpayer's amnesty tax return shall invalidate any amnesty granted pursuant to KRS 131.410 to 131.445.
- (2) This section shall not apply to any taxpayer who is on notice, written or otherwise, of a criminal investigation being conducted by an agency of the state or any political subdivision thereof or the United States, nor shall this section apply to any taxpayer who is the subject of any criminal litigation which is pending on the date of the taxpayer's application in any court of this state or the United States for nonpayment, delinquency, evasion or fraud in relation to any federal taxes or to any of the taxes to which this amnesty program is applicable.~~Also, this section shall not apply to any taxpayer who is required to remit installment payments pursuant to a valid payment agreement authorized by the cabinet any time prior to the tax amnesty period.~~
- (3) No refund or credit shall be granted for any interest, *fee*, or penalty paid prior to the time the taxpayer requests amnesty pursuant to KRS 131.420.
- (4) Unless the cabinet in its own discretion redetermines the amount of taxes~~and interest~~ due, no refund or credit shall be granted for any taxes~~or interest~~ paid under the amnesty program.

Section 3. KRS 131.420 is amended to read as follows:

- (1) The provisions of KRS 131.400 to 131.445 shall apply to any eligible taxpayer who files an application for amnesty within the time prescribed by the cabinet and does the following:
 - (a) Files completed tax returns for all years or tax reporting periods as stated on the application for which returns have not previously been filed and files completed amended tax returns for all years or tax reporting periods as stated on the application for which the tax liability was underreported, except in cases in which the tax liability has been established through audit.
 - (b) Pays in full the taxes due for the periods and taxes applied for at the time the application or amnesty tax returns are filed within the amnesty period~~and pays with the taxes the amount of interest due as provided under subsection (1) of KRS 131.425~~ and pays the amount of any additional tax~~and interest~~ owed within thirty (30) days of notification by the cabinet.
 - (c) Pays in full within the amnesty period all taxes previously assessed by the cabinet that are~~final~~ due and owing at the time the application or amnesty tax returns are filed~~and pays with the taxes the amount of interest due as provided under subsection (1) of~~

~~KRS 131.425 and pays within thirty (30) days of notification by the cabinet the amount of any additional interest owed].~~

- (2) An eligible taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, notwithstanding the fact that the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the cabinet; and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. An eligible taxpayer may participate in the amnesty program to the extent of the uncontested portion of any assessed liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or amnesty returns.
- (3) The cabinet may enter into an installment payment agreement *as provided in KRS 131.081(9)* in cases of severe hardship in lieu of the complete payment required under subsection (1) of this section. ~~[In such cases, twenty five percent (25%) of the amount due shall be paid with the application or amnesty return with the balance to be paid in monthly installments not to exceed three (3) months.]~~ Failure of the taxpayer to make timely payments shall void the terms of the amnesty program. All such agreements and payments shall include interest as provided under subsection (2) of KRS 131.425.
- (4) If, following the termination of the tax amnesty period, the cabinet issues a deficiency assessment based upon information independent of that shown on a return filed pursuant to subsection (1) of this section, the cabinet shall have the authority to impose penalties and criminal action may be brought where authorized by law only with respect to the difference between the amount shown on the amnesty tax return and the correct amount of tax due. The imposition of penalties or criminal action shall not invalidate any waiver granted under KRS 131.410. With the exception of the cost of collection fee imposed under subsection (1) of KRS 131.440, all assessments issued by the cabinet under KRS 131.410 to 131.445 may be protested by the taxpayer in the same manner as other assessments pursuant to the terms of this chapter.

Section 4. KRS 131.425 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 131.183(1), all taxes paid with the amnesty tax return shall bear *no* interest *imposed* ~~[at one half (1/2) of the variable tax interest rates applicable]~~ under KRS 131.183(1) or other applicable statutes. ~~[Any tax not previously assessed by the cabinet and due for taxable periods ending or transactions occurring prior to July 1, 1982, shall bear interest at the rate of four percent (4%) per annum.]~~
- ~~(2) [All installment agreements authorized under subsection (3) of KRS 131.420 shall bear interest on the outstanding amount of tax due during the installment period at the full rate prescribed under KRS 131.183.]~~
- ~~(3) [Notwithstanding the provisions of KRS 131.183(2) and 141.235, if any overpayment of tax under KRS 131.410 to 131.445 is refunded or credited within one hundred eighty (180) days after the return is filed, no interest shall be allowed.]~~

Section 5. KRS 131.440 is amended to read as follows:

- (1) In addition to all other penalties provided under KRS 131.410 to 131.445, *Section 14 of this Act*, and KRS 131.990 and any other law, there is hereby imposed after the expiration of the tax amnesty period *the following cost of collection fees*:

- (a) A cost of collection fee of **twenty-five percent (25%)**~~twenty percent (20%)~~ on all taxes which are or become~~final,~~ due and owing to the cabinet for any reporting period, regardless of when due. This fee shall be in addition to any other applicable fee provided in this subsection;~~;~~
- (b) Taxes which are assessed and collected after the amnesty period for taxable periods ending or transactions occurring prior to December 1, **2001**~~1987~~, shall be charged a cost of collection fee of **twenty-five percent (25%)**~~twenty percent (20%)~~ at the time of assessment; **and**~~;~~
- (c) For any taxpayer who failed to file a return for any previous tax period for which amnesty is available and fails to file the return during the amnesty period, the cost of collection fee shall be fifty percent (50%) of any tax deficiency assessed after the amnesty period.~~These fees shall be in addition to all other applicable penalties.~~
- (2) ~~However,~~ The secretary of revenue shall have the right to waive any penalties or collection fees when it is demonstrated that any deficiency of the taxpayer was~~not~~ due to **reasonable cause as defined in KRS 131.010(9)**~~negligence, intentional disregard of administrative regulations, or fraud~~. However, any taxes that cannot be paid under the amnesty program because of the exclusions in subsection (2) of KRS 131.410 shall not be subject to these fees.
- (3)~~(2)~~ The provisions of subsection (1) of this section shall not relate to any account which has been protested pursuant to KRS 131.110 as of the expiration of the amnesty period and which does not become~~final,~~ due and owing, or to any account on which the taxpayer is remitting timely payments under a payment agreement negotiated with the cabinet prior to or during the amnesty period.
- (4)~~(3)~~ The fee levied under subsection (1) of this section shall not apply to taxes paid pursuant to the terms of the amnesty program nor shall the judgment penalty of twenty percent (20%) levied under KRS 135.060(3) apply in any case in which the fee levied under this section is applicable.

Section 6. KRS 131.445 is amended to read as follows:

- (1) After the expiration of the tax amnesty period, the cabinet shall vigorously pursue all civil, administrative, and criminal penalties authorized by **state and federal** law for all taxes found to be due the Commonwealth.
- (2) In addition to all other penalties provided under KRS 131.410 to 131.445, **Section 14 of this Act**, and 131.990 and any other law, any taxpayer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class D felony.

SECTION 7. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) **Notwithstanding the provisions of KRS 131.190 or any other confidentiality law to the contrary, the cabinet may publish a list or lists of taxpayers that owe delinquent taxes or fees administered by the Revenue Cabinet, and that meet the requirements of Section 8 of this Act.**
- (2) **For purposes of this section, a taxpayer may be included on a list if:**

- (a) *The taxes or fees owed remain unpaid at least forty-five (45) days after the dates they became due and payable; and*
 - (b) *A tax lien or judgment lien has been filed of public record against the taxpayer before notice is given under Section 9 of this Act.*
- (3) *In the case of listed taxpayers that are business entities, the Revenue Cabinet may also list the names of responsible persons assessed pursuant to KRS 136.565, 138.885, 139.185, 141.340, and 142.357 for listed liabilities, who are not protected from publication by subsection (2) of this section, and for whom the requirements of Section 8 of this Act are satisfied with regard to the personal assessment.*
- (4) *Before any list is published under this section, the cabinet shall document that each of the conditions for publication as provided in this section has been satisfied, and that procedures were followed to ensure the accuracy of the list and notice was given to the affected taxpayers.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *The Revenue Cabinet may publish a list of all of the taxpayers described in Section 7 of this Act.*
- (2) *For the purposes of this section, a tax or fee is not delinquent if:*
- (a) *The procedures enumerated in KRS 131.110 have not been waived or exhausted at the time when notice would be given under Section 9 of this Act; or*
 - (b) *The liability is subject to a payment agreement and there is no delinquency in the payments required under the agreement.*
- (3) *Unpaid liabilities are not subject to publication if:*
- (a) *The cabinet is in the process of reviewing or adjusting the liability;*
 - (b) *The taxpayer is a debtor in a bankruptcy proceeding and the automatic stay is in effect;*
 - (c) *The cabinet has been notified that the taxpayer is deceased; or*
 - (d) *The time period for enforced collection of the taxes or fees has expired.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *At least sixty (60) days before publishing the name of a delinquent taxpayer, the cabinet shall mail a written notice to the taxpayer, detailing the amount and nature of each liability and the intended publication of the information listed in Section 10 of this Act related to the liability. The notice shall be mailed by first class mail addressed to the last known address of the taxpayer. The notice shall include information regarding the exceptions listed in Section 8 of this Act and shall state that the taxpayer's information will not be published if the taxpayer pays the delinquent obligation, enters into an agreement to pay, or provides information establishing that Section 8 prohibits publication of the taxpayer's name.*
- (2) *After at least sixty (60) days have elapsed since the notice was mailed and the delinquent tax or fee has not been paid and the taxpayer has not proved to the cabinet that Section 8*

of this Act prohibits publication, the cabinet may publish in a list of delinquent taxpayers the information about the taxpayer that is listed in Section 10 of this Act.

SECTION 10. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The list may be published by any medium or method. The list may contain the name, address, type of tax or fee, and period for which payment is due for each liability, including penalties, interest, and other charges owed by each listed delinquent taxpayer.

SECTION 11. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The cabinet shall remove the name of a taxpayer from the list of delinquent taxpayers after the cabinet receives written notice of and verifies any of the following facts about the liability in question:

- (1) The taxpayer has contacted the cabinet and arranged resolution of the liability;*
- (2) An active bankruptcy proceeding has been initiated for the liability; or*
- (3) A bankruptcy proceeding concerning the liability has resulted in discharge of the liability.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

If the cabinet publishes a name under Section 7 of this Act in error, the taxpayer whose name was erroneously published has all the rights enumerated in KRS 131.081 for an aggrieved taxpayer.

Section 13. KRS 131.150 is amended to read as follows:

- (1) When the Revenue Cabinet reasonably believes that any taxpayer has withdrawn from the state or concealed his assets or a material part thereof so as to hinder or evade the assessment or collection of taxes, or has desisted from any taxable activity in the state, or has become domiciled elsewhere, or has departed from this state with fraudulent intent to hinder or evade the assessment or collection of taxes, or has done any other act tending to render partly or wholly ineffective proceedings to assess or collect any such taxes, or contemplates doing any of these acts in the immediate future, or that any tax claim for any other reason is being endangered, such tax liability shall become due and payable immediately upon assessment or determination of the amount of taxes due, as authorized in this section.
- (2) Under any of the circumstances set out in subsection (1) of this section, the cabinet may make a tentative assessment or determination of the taxes due, and may proceed immediately to bring garnishment, attachment or any other legal proceedings to collect the taxes so assessed or determined to be due. *Notwithstanding the provisions of subsection (1) of Section 14 of this Act, if the tax so assessed is due to the failure of the taxpayer to file a required tax return a minimum penalty of one hundred dollars (\$100) shall be assessed unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed returns results in a refund.* No bond shall be required of the cabinet in such proceedings. The taxpayer may stay legal proceedings by filing a bond in an amount sufficient in the opinion of the cabinet to cover the taxes, penalties, interest and costs. If no legal proceedings have

been instituted, the cabinet may require a bond adequate to cover all taxes, penalties and interest. On making bond, exception to the assessment or determination of tax liability may be filed in the same manner and time as provided in KRS 131.110. If no exceptions are filed to the tentative assessment or determination, it shall become final.

- (3) The cabinet may require any such taxpayer to file with it forthwith the reports required by law or regulation, or any additional reports or other information necessary to assess the property or determine the amount of tax due.
- (4) If the cabinet fails to exercise the authority conferred by this section, such taxpayer shall report and pay all taxes due as otherwise provided by law.

Section 14. KRS 131.180 is amended to read as follows:

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

- (1) Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the cabinet shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).
- (2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the cabinet or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the cabinet shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).
- (3) Any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and 141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the cabinet that the failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of the underpayment or late payment; however, the penalty shall not be less than twenty-five dollars (\$25).
- (4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the cabinet, the cabinet may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than *one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund*[twenty five dollars (\$25)].

- (5) If any taxpayer fails or refuses to pay within forty-five (45) days of the due date any tax assessed by the cabinet which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due and owing but not paid.
- (6) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the cabinet within the time required by law shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars (\$50).
- (7) If any tax assessed by the cabinet is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.
- (8) If any tax assessed by the cabinet is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.
- (9) If any check tendered to the cabinet is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) nor more than one hundred dollars (\$100). If the taxpayer who tendered the check shows to the cabinet's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the cabinet shall waive the penalty.
- (10) Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).
- (11) The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Board of Tax Appeals or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.
- (12) Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.
- (13) All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the cabinet shall likewise be liable for all penalties and interest applicable thereto.

SECTION 15. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 138.210 to 138.446 shall be*

personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.210 to 138.446. Corporate dissolution, withdrawal of the corporation from the state, or the cessation of holding any corporate office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every person holding a corporate office at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax imposed becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of Section 14 of this Act, Sections 2 to 6 of this Act, and KRS 131.990.

(a) The provisions of this section shall not apply if a corporation on an annual basis elects to be exempt from the provisions of KRS 138.224 by:

- 1. Filing with the cabinet a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the cabinet, or five thousand dollars (\$5,000), whichever is greater;*
- 2. Certifying by an electronic method acceptable by both the dealer and the cabinet no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and*
- 3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.*

For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

(b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer as prescribed by paragraph (a) of this subsection, the cabinet may immediately make demand of the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340 and the provisions of this section shall apply.

- (2) Notwithstanding any other provision of this chapter, KRS 275.150, or KRS 362.220(2) to the contrary, the managers of a limited liability company and the partners of a registered limited liability partnership or any other person holding any equivalent office of a limited liability company or a registered limited liability partnership subject to the provisions of KRS 138.210 to 138.446 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.210 to 138.446. Dissolution, withdrawal of the limited liability company or registered limited liability partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company and partner of a registered limited liability partnership at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable*

penalties imposed under the provisions of Section 14 of this Act, Sections 2 to 6 of this Act, and KRS 131.990.

(a) The provisions of this section shall not apply if a limited liability company or a registered limited liability partnership on an annual basis elects to be exempt from the provisions of KRS 138.224 by:

- 1. Filing with the cabinet a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the cabinet, or five thousand dollars (\$5,000), whichever is greater;*
- 2. Certifying by an electronic method acceptable by both the dealer and the cabinet no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and*
- 3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.*

For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

(b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer prescribed by paragraph (a) of this subsection, the cabinet may immediately make demand of the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340 and the provisions of this section shall apply.

Section 16. KRS 139.185 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person. The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due. Taxes as used in this section shall include interest accrued at the rate provided by KRS 139.650 and all applicable penalties imposed under this chapter and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445 and 131.990.*
- (2) Notwithstanding any other provisions of this chapter, KRS 275.150, or KRS 362.220(2) to the contrary, the managers of a limited liability company and the partners of a registered limited liability partnership or any other person holding any equivalent office of a limited liability company or a registered limited liability partnership subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter. Dissolution, withdrawal of the limited liability company or registered limited liability partnership from the state, or the cessation of holding any*

office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company and partner of a registered limited liability partnership at the time the taxes become or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under Section 14 of this Act, Sections 2 to 6 of this Act, and KRS 131.990.

Section 17. KRS 141.340 is amended to read as follows:

- (1) An employer shall be liable for the payment of the tax required to be deducted and withheld under KRS 141.310 and 141.315, and shall not be liable to any person for the amount of any such payment.
- (2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any corporation subject to KRS 141.310 or 141.315 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this chapter from wages paid to one (1) or more employees of any such corporation, and neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any such corporate office shall discharge the foregoing liability of any such person; provided that the personal and individual liability shall apply to each or every person holding such corporate office at the time such tax becomes or became obligated. *No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.138, all applicable penalties and fees imposed under Section 14 of this Act, Sections 2 to 6 of this Act, and KRS 131.990.*
- (3) *Notwithstanding any other provisions of this chapter, KRS 275.150, or KRS 362.220(2) to the contrary, the managers of a limited liability company and the partners of a registered limited liability partnership or any other person holding any equivalent office of a limited liability company or a registered limited liability partnership subject to KRS 141.310 or 141.315 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this chapter from wages paid to one (1) or more employees of any such limited liability company or registered limited liability partnership. Dissolution, withdrawal of the limited liability company or registered limited liability partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company and partner in a registered limited liability partnership at the time the taxes become or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under Section 14 of this Act, Sections 2 to 6 of this Act, and KRS 131.990.*

Section 18. Sections 7 to 17 of this Act shall take effect January 1, 2003.

Section 19. The amendments contained in subsection (2) of Section 15 of this Act, in Section 16 of this Act, and in subsection (3) of Section 17 of this Act apply retroactively to July 15, 1994.

Approved April 24, 2002