

**CHAPTER 63****(HB 458)**

AN ACT relating to local taxation.

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

Section 1. KRS 67.750 is amended to read as follows:

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
  - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
  - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (3) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (4) "Employee" means *any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee*~~[as defined in Section 3401(c) of the Internal Revenue Code]~~;
- (5) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;
- (6) "Gross receipts" means all revenues or proceeds derived from *the sale, lease, or rental*~~[sales]~~ of goods,~~[or]~~ services, *or property* by a business entity *reduced by the following*:
  - (a) *Sales and excise taxes paid; and*
  - (b) *Returns and allowances*~~[with only a deduction allowed for sales and excise taxes and returns and allowances]~~;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~2003~~~~[2002]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~2003~~~~[2002]~~, that would otherwise terminate;

- (8) "Net profit"~~[in case of a business entity]~~ means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
- (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
  - (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
  - (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
  - (d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
  - (e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;
- (9) *"Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;*
- (10) "Tax district" means a city of the first to fifth class, county, urban-county, charter county,~~[~~ consolidated local government, *school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes;*
- (11)~~(10)~~ "Taxable gross receipts" in case of a business entity having payroll *or sales revenues* both within and without a tax district means gross receipts as defined in subsection (6) of this section,~~[and]~~ as apportioned under KRS 67.753;
- (12)~~(11)~~ "Taxable gross receipts" in case of a business entity having payroll *or sales revenue* only in one (1) tax district means gross receipts as defined in subsection (6) of this section;
- (13)~~(12)~~ "Taxable net profit" in case of a business entity having payroll *or sales revenue* only in one (1) tax district means net profit as defined in subsection (8) of this section;
- (14)~~(13)~~ "Taxable net profit" in case of a business entity having payroll *or sales revenue* both within and without a tax district means net profit as defined in subsection (8) of this section,~~[and]~~ as apportioned under KRS 67.753; and
- (15)~~(14)~~ "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

Section 2. KRS 67.753 is amended to read as follows:

- (1) Except as provided~~[for]~~ in subsection (4)~~(2)~~ of this section, net profit or gross receipts shall be apportioned *as follows*:
  - (a) *For business entities with both payroll and sales revenue in more than one (1) tax district,*~~[to the tax district]~~ by multiplying the net profit or gross receipts by a fraction, the numerator of which is the payroll factor, *described in subsection (2) of this*

*section*, plus the sales factor, *described in subsection (3) of this section*, and the denominator of which is two (2); *and*

(b) *For business entities with sales revenue in more than one (1) tax district, by multiplying the net profits or gross receipts by the sales factor as set forth in subsection (3) of this section.*

(2)~~(a)~~ The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the tax district during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the tax district based on the time the individual's service is performed within the tax district.

(3)~~(b)~~—1. The sales factor is a fraction, the numerator of which is the total sales *revenue* of the business entity in the tax district during the tax period, and the denominator of which is the total sales *revenue* of the business entity everywhere during the tax period.

(a)~~(2)~~ *The sale, lease, or rental*~~[Sales]~~ of tangible personal property *is*~~[are]~~ in the tax district if:

1.~~(a)~~ The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the tax district regardless of the f.o.b. point or other conditions of the sale; or

2.~~(b)~~ The property is shipped from an office, store, warehouse, factory, or other place of storage in the tax district and the purchaser is the United States government.

(b)~~(3)~~ Sales *revenues*, other than *revenue from the sale, lease, or rental*~~[sales]~~ of tangible personal property *or the lease or rental of real property*, are apportioned to the tax district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the tax district and the denominator of which is the total time spent performing that income-producing activity.

(c) *Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.*

(4)~~(2)~~ If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the tax district, the business entity may petition the tax district or the tax district may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the tax district; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit or gross receipts.

Section 3. KRS 67.755 is amended to read as follows:

(1) Every business entity, other than a sole proprietorship, subject to *a net profits, gross receipts, or occupational license tax levied by a tax district*~~[taxation under KRS 68.180, 68.197, 91.200, or 92.281]~~ shall make quarterly estimated tax payments on or before the

fifteenth day of the fourth, sixth, ninth, and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).

- (2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:
  - (a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;
  - (b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or
  - (c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).
- (3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of *the* quarterly payment required under subsection (2) of this section from the earlier of:
  - (a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section; or
  - (b) The due date of the annual return.

A fraction of a month is counted as an entire month.

- (4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the tax district or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).
- (5) The provisions of this section shall not apply unless adopted by the tax district.

Section 4. KRS 67.760 is amended to read as follows:

- (1) ~~[As specified by KRS 67.750 to 67.790 and its application, the federal income tax law and its application, and the administrative and judicial interpretations of the federal income tax law,]~~For purposes of KRS 67.750 to 67.790 computations of gross income and deductions therefrom, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.
- (2) Every business entity subject to an occupational license tax governed by the provisions of KRS 67.750 to 67.790 shall keep records, render under oath statements, make returns, and comply with rules as the tax district from time to time may prescribe. Whenever the tax district ~~deems~~~~[judges]~~ it necessary, *the tax district*~~[it]~~ may require a business entity, by notice served to the business entity, to make a return, render~~[under oath]~~ statements *under oath*, or keep records, as the tax district deems sufficient to *determine the tax liability of*~~[show whether or not]~~ the business entity~~[is liable for tax, and the extent of the liability]~~.
- (3) The tax district *may require*, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity,~~[may require]~~ the attendance of a representative of the business entity or of any other person having knowledge in the premises.

Section 5. KRS 67.770 is amended to read as follows:

- (1) A tax district may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service ***or is agreed to by the tax district and the business entity***, for filing its return, if the business entity, on or before the date prescribed for payment of the tax, requests the extension and pays the amount properly estimated as its tax.
- (2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the tax district. A fraction of a month is counted as an entire month.

Section 6. KRS 67.778 is amended to read as follows:

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of ***any tax subject to the provisions of***~~the tax levied by~~ KRS 67.750 to 67.790.
- (2) Any tax collected pursuant to the provisions of KRS 67.750 to 67.790 may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the tax district, whichever is the later, except that:
  - (a) In any case where the assessment period contained in KRS 67.775 has been extended by an agreement between the business entity and the tax district, the limitation contained in this subsection shall be extended accordingly.
  - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

- (3) Exclusive authority to refund or credit overpayments of taxes collected ***by a tax district***~~pursuant to KRS 67.083, 68.180, 68.197, 91.200, and 92.281~~ is vested in ***that***~~the~~ tax district.

Section 7. KRS 67.780 is amended to read as follows:

Every employer making payment of compensation ***to an employee*** shall deduct and withhold upon the ***payment of the compensation any tax imposed against the compensation by a tax district. Amounts withheld shall be paid to the levying tax district***~~a tax determined under KRS 67.083, 68.180, 68.197, 91.200, or 92.281 and pay~~ in accordance with KRS 67.783. A tax district may impose minimum and maximum tax liabilities for the tax on compensation.

Section 8. KRS 67.788 is amended to read as follows:

- (1) Where there has been an overpayment of tax under KRS 67.780, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under KRS 67.780 by the employer.
- (2) Unless written application for refund or credit is received by the tax district from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.
- (3) An employee who has compensation attributable to activities ***performed*** outside a tax district, based on time spent outside the tax district,~~but~~ whose employer has withheld and

remitted the occupational license fee on the compensation *attributable to activities performed outside the tax district to the* ~~to another~~ tax district, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the tax district may confirm with the employer the percentage of time spent *outside the tax district* and the amount of compensation *attributable to* ~~for~~ activities *performed* outside the tax district prior to approval of the refund.

Section 9. KRS 67.790 is amended to read as follows:

- (1) A business entity subject to tax on gross receipts or net profits *may be subject to* ~~shall pay~~ a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:
  - (a) *Fails to file* ~~Files~~ any return or report *on or before* ~~after~~ the due date prescribed for filing or ~~the due date~~ as extended by the tax district, ~~unless it is shown to the satisfaction of tax district that the failure to file is due to reasonable cause~~; or
  - (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for *payment* ~~filing~~.

The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

- (2) Every employer who fails to file a return or pay the tax on or before the *date* ~~time~~ prescribed under KRS 67.783 *may be subject to* ~~shall pay~~ a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).
- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the tax district. A fraction of a month is counted as an entire month.
- (4) Every tax *subject to the provisions of* ~~imposed by~~ KRS 67.750 to 67.790, and all increases, interest, and penalties thereon, shall become, from the time *the tax* ~~it~~ is due and payable, a personal debt *of the taxpayer* to the tax district ~~from the business entity or other person liable therefor~~.
- (5) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, ~~or~~ willfully makes a false return, or ~~who~~ willfully fails to pay taxes owing or collected, with *the* intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under KRS 67.750 to 67.790 of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.
- (7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the tax district and required to be filed with the tax district by the

provisions of KRS 67.750 to 67.790, or by the rules of the tax district or by written request for information to the business entity by the tax district.

- (8) (a) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.
- (b) *Any person who violates the provisions of paragraph (a) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.*
- (c) *Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.*

Section 10. KRS 67.795 is amended to read as follows:

The provisions of KRS 67.750 to 67.790 shall apply on and after January 1, 2006, to all tax districts that levy an occupational license fee or a tax on net profits or gross receipts, *except that the provisions of KRS 67.750 to 67.790 shall not apply to the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614*~~imposed under KRS 67.083, 68.180, 68.197, 91.200, and 92.281, or any other statutory provision~~. A~~However, a~~ tax district may apply the provisions of KRS 67.750 to 67.790 to the levy of an occupational license fee or a tax on net profits or gross receipts, *except the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614*~~imposed under KRS 67.083, 68.180, 68.197, 91.200, and 92.281 or any other statutory provision~~ by adoption of an ordinance prior to January 1, 2006.

**Approved April 7, 2004**