

CHAPTER 79

(HB 163)

AN ACT relating to school finance.

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

SECTION 1. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

As used in KRS 160.613 to 160.617:

- (1) *"Cabinet" means the Revenue Cabinet;*
- (2) *"Communications service" shall have the same meaning as provided in KRS 139.195 but does not include:*
 - (a) *Prepaid calling services;*
 - (b) *Interstate telephone service, if the interstate charge is separately itemized for each call; and*
 - (c) *If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records.*
- (3) *"Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased.*
- (4) *"Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services.*
- (5) *"Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas.*

Section 2. KRS 160.613 is amended to read as follows:

- (1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the ~~district~~~~{county}~~, of *utility services*~~{telephonic and telegraphic communications services, electric power, water, and natural, artificial, and mixed gas. "Gross receipts" includes all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of the above utilities}~~, except that "gross receipts" shall not include amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production, and shall not include amounts received for furnishing any of the above utilities which are to be resold.
- (2) ~~If~~~~[In the event that]~~ any user of *utility services*~~{telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas}~~ purchases the *utility services*~~{telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas}~~ directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax~~[under the provisions of subsection (1) of this section]~~, then the consumer, if ~~the~~~~[such]~~ tax has been levied in ~~the consumer's~~~~[his]~~ district, shall be liable for the tax and shall pay directly to the ~~cabinet~~~~{county finance officer}~~, in accordance with the provisions of KRS 160.615, a utility gross receipts license

tax for schools computed by multiplying the gross cost of all *utility services* [telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas] received by the tax rate levied under the provisions of this section.

- ~~(3) "Gross cost" shall mean the total cost of the telephonic and telegraphic communications, electrical power, water, and natural, artificial, or mixed gas including the cost of the tangible personal property and any services associated with obtaining the telecommunication and telegraphic services or tangible personal property, such as gas, electricity, and water, regardless from whom purchased.~~
- ~~(4) The tax imposed by this section shall apply to mobile telecommunications services as defined in 4 U.S.C. sec. 124 only if the customer's place of primary use is within the jurisdictional boundaries of the taxing jurisdiction. The provisions of 4 U.S.C. secs. 116 to 126 are hereby adopted and incorporated by reference.~~
- ~~(5) If a customer believes that a tax, charge, fee, or assignment of place of primary use or taxing jurisdiction on a bill is incorrect, the customer shall notify the home service provider about the alleged error in writing. This notification shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider reasonably requires. Within sixty (60) days of receiving the customer's notification, the home service provider shall either correct the error and refund or credit all taxes, charges, and fees incorrectly charged to the customer within four (4) years of the customer's notification, or explain to the customer in writing how the bill was correct and why a refund or credit will not be made.~~
- ~~(6) A customer shall not have a cause of action against a home service provider for any erroneously collected taxes, charges, or fees until the customer has exhausted the procedure set forth in subsection (5) of this section.]~~

Section 3. KRS 160.614 is amended to read as follows:

- (1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services in addition to the gross receipts derived from the furnishing of the *utility services defined in Section 1 of this Act* [enumerated in KRS 160.613].
- (2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services, in addition to the gross receipts derived from the furnishing of the *utility services defined in Section 1 of this Act* [enumerated in KRS 160.613], if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable television services.

Section 4. KRS 160.615 is amended to read as follows:

- (1) The school taxes authorized by *Sections 2 and 3 of this Act* [KRS 160.613] shall be due and payable monthly and shall be remitted *to the cabinet* on or before the twentieth day of the next succeeding calendar month.
- (2) *On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the cabinet in the form prescribed by the cabinet, together with any tax due.*

- (3) *For purposes of facilitating the administration, payment or collection of the taxes levied by Sections 2 and 3 of this Act, the cabinet, in consultation with the impacted school district, may permit or require returns or tax payments for periods other than those prescribed in subsections (1) and (2) of this section.*
- (4) *The cabinet may, upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the cabinet, extend the time for filing the return or paying the tax for a period not to exceed thirty (30) days.*
- (5) *Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.*

SECTION 5. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

For purposes of administering the taxes authorized by Sections 2 and 3 of this Act relating to the sourcing of communications services and the rights of customers, the provisions of KRS 139.105(2), KRS 139.195, and KRS 139.775 shall apply.

SECTION 6. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall collect all taxes imposed by school districts pursuant to Sections 2 and 3 of this Act, and shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of these taxes as provided under KRS Chapters 131, 134, and 135, except as otherwise provided in KRS 160.613 to 160.617. The cabinet shall distribute the taxes collected to each school district imposing the tax on a monthly basis. Distributions shall be made in accordance with the district boundary information submitted to the cabinet pursuant to Section 9 of this Act, as modified by any adjustments or agreements made pursuant to the provisions of Section 7 of this Act.*
- (2) *From each distribution, the cabinet shall deduct an amount which represents the proportionate share of the cabinet's actual operating and overhead expenses incurred in the collection and administration of the taxes not to exceed one percent (1%) of the amount collected. The cabinet shall report its actual expenses and the allocation of expenses among school districts to the Kentucky Board of Education on a quarterly basis.*
- (3) *As soon as practicable after each return is received, the cabinet may examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet on behalf of the school district within two (2) years from the date prescribed by law for the filing of the return including any extensions granted, except as provided in this section. A notice of the assessment shall be mailed to the taxpayer.*
- (4) *In the case of a failure to file a return or the filing of a fraudulent return, the excess may be assessed at any time.*

SECTION 7. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

- (1) *If the cabinet determines that the allocation among districts as submitted by the taxpayer on the return varies from the school district boundary information submitted to the cabinet pursuant to Section 9 of this Act, the cabinet shall:*

- (a) *Make a proposed administrative adjustment to correct the erroneous allocation going forward;*
 - (b) *Determine whether the erroneous allocation was used on prior returns and if it was, make a proposed administrative adjustment going back a maximum of one (1) year from the date the erroneous allocation was discovered; and*
 - (c) *Retain taxes collected and still on hand for distribution to the impacted districts that are related to the erroneous allocation until the proposed administrative adjustment becomes final.*
 - (2) *Within ten (10) days of the discovery of the erroneous allocation, the cabinet shall notify the taxpayer and the impacted school districts in writing of the allocation discrepancy, including the dollar amount at issue, the proposed administrative adjustment to be made, and the process for agreeing to or filing an exception to the proposed administrative adjustment.*
 - (3) *The proposed administrative adjustment shall become final upon the earlier of the receipt by the cabinet of written acceptance of the administrative adjustment by all impacted school districts or the expiration of forty-five (45) days from the date of the notice with no exception having been filed.*
 - (4)
 - (a) *Exceptions to the proposed administrative adjustment shall be filed with the secretary of the cabinet, within forty-five (45) days from the date of the notice, and shall include a supporting statement setting forth the basis of the exception. A copy of any exception filed shall also be mailed to the impacted utility services provider and any other impacted school district.*
 - (b) *After the exception has been filed, the impacted school district may request a conference with the cabinet. The request shall be granted in writing stating the time and date of the conference. Other impacted school districts and the impacted utility services provider may also attend any conference. Additional conferences may be held upon mutual agreement.*
 - (c) *After considering the exceptions filed by the impacted school district, including any information provided during any conferences, a final administrative ruling shall be issued by the cabinet. The final administrative ruling shall be mailed to all impacted school districts as well as the impacted utility services provider.*
 - (d) *The impacted school district filing the exception may request in writing a final ruling at any time after filing exceptions and a supporting statement, and the cabinet shall issue the ruling within thirty (30) days after the request is received by the cabinet.*
 - (e) *After a final ruling has been issued, the school district may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the school district is located.*
 - (5) *The method and timing of the implementation of a final administrative ruling that requires a reallocation of previously distributed tax receipts shall be determined by agreement of the impacted school districts, provided that any agreement allowing for adjustments to be made over time in the future shall not extend beyond four (4) years.*
 - (a) *The cabinet shall, upon request of the impacted school districts, assist in the development of an agreement.*

- (b) *An agreement that requires distribution changes that vary from the district boundary information shall be provided to the cabinet so that distributions can be made in accordance with the agreement.*
- (c) *If the impacted school districts fail to reach an agreement regarding the reallocation of previously distributed tax receipts, the cabinet shall adjust distributions going forward for four (4) years so that at the expiration of four (4) years, the district that should have received the original distribution has recouped all of the funds distributed erroneously, and the district that erroneously received the funds has repaid all of the funds distributed erroneously.*

SECTION 8. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

- (1) *Any utility service provider that has paid the utility gross receipts tax imposed by a school district pursuant to Sections 2 and 3 of this Act may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.*
- (2) *A request for refund shall be in writing, and shall be made to the cabinet with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.*
- (3) *Refunds shall be authorized by the cabinet, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.*
- (4) *The cabinet shall make authorized refunds from current tax collections in its possession for the district. If sufficient funds are not available, the cabinet shall notify the school district and the school district shall make the refund.*
- (5) *If the cabinet denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located.*

SECTION 9. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

- (1) *The superintendent of schools in each school district levying the tax permitted by KRS 160.593 shall, on or before March 31, 2005 provide to the cabinet and to each entity providing utility services within the school district, the boundaries of the school district.*
- (2) *If the boundaries reported to the cabinet and to each entity providing utility services within the school district change, the superintendent of schools shall report the boundary changes to the cabinet and to each entity providing utility services within the school district.*
- (3) *The cabinet and entities providing utility services within the school district shall allocate tax payments among the various school districts imposing the taxes authorized by Sections 2 and 3 of this Act in accordance with the most recent boundary information provided by the superintendents, as adjusted by any agreements entered into pursuant to Section 7 of this Act. The cabinet and entities providing utility services within a school district shall not be responsible for nor subject to the imposition of penalties or interest relating to, distribution errors resulting from incorrect boundary information provided pursuant to this section, and may rely upon the most recent boundary information and any agreements entered into pursuant to Section 7 of this Act and provided by each superintendent as accurate.*

- (4) *If there is a conflict regarding school district boundaries, the cabinet may, until the conflict is resolved, distribute the total tax revenues collected for the districts involved in the conflict proportionately to the districts based upon the average daily attendance in the districts for the previous school year.*

SECTION 10. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

The uniform penalty provisions of KRS 131.180 shall apply to all taxes levied by school districts pursuant to Sections 2 and 3 of this Act.

SECTION 11. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provisions to the contrary, the secretary of the cabinet, in consultation with impacted school district, shall waive any penalty, but not interest, where it is shown to the satisfaction of the cabinet that the failure to file or pay timely is due to reasonable cause.

SECTION 12. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

The taxes collected by the cabinet pursuant to KRS 160.613 to 160.617 are remitted to the cabinet for administrative purposes only and shall remain the property of the local school districts levying the tax. The amounts so collected shall not be distributed, allocated, expended, or used in any manner except as provided in KRS 160.613 to 160.617.

Section 13. KRS 160.617 is amended to read as follows:

Notwithstanding the provisions of KRS 278.040(2), any utility *services provider* required to pay the tax authorized by KRS 160.613 may increase its rates in any *school district*~~county~~ in which it is required to pay the school tax by three percent (3%). Any utility so increasing its rates shall separately state on the bills sent to its customers the amount of *the*~~such~~ increase and shall identify *the*~~such~~ amount as: "Rate increase for school tax."

Section 14. KRS 160.640 is amended to read as follows:

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633, *except the Revenue Cabinet*, shall be required to secure a corporate surety bond in an amount to be set by the Kentucky Board of Education. The cost of the surety bond shall be considered a part of the cost of the administration of the school taxes authorized under KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633.

Section 15. KRS 160.648 is amended to read as follows:

- (1) Any person, individual, or corporation required by the provisions of KRS 160.605 to 160.611~~160.613 to 160.617,~~ and 160.621 to 160.633 to file any return or report or furnish any information requested under the authority of KRS 160.605 to 160.611~~160.613 to 160.617,~~ and 160.621 to 160.633 who fails to file such return or report or furnish such information on or before the date required shall pay a penalty in the amount of ten dollars (\$10) for each~~such~~ failure.
- (2) Any person, individual, or corporation who fails to pay, on or before the due date, any school tax authorized by KRS 160.605 to 160.611~~160.613 to 160.617,~~ and 160.621 to

160.633 and levied by the district board of education shall pay a penalty of one percent (1%) per month of the amount of such tax past due until paid.

Section 16. KRS 160.520 is amended to read as follows:

The laws applying to penalties on and the collection of delinquent school taxes, *except the taxes imposed by KRS 160.613 to 160.617* shall be the same as the general laws applying to penalties on and the collection of delinquent taxes of the taxing districts which embrace the various school districts.

Section 17. This Act takes effect July 1, 2005.

Approved April 7, 2004