

CHAPTER 118**(HB 162)**

AN ACT relating to debts owed to the Commonwealth.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) "Debt" means a sum certain which has been certified by an agency as due and owing;**
- (b) "Liquidated debt" means a legal debt for a sum certain which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted; and for the Court of Justice means a legal debt including any fine, fee, court costs or restitution due the Commonwealth, which have been imposed by a final sentence of a trial court of the Commonwealth and for which the time permitted for payment pursuant to the provisions of KRS 23A.205(3) or KRS 24A.175(4) has expired;**
- (c) "Agency" means an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010;**
- (d) "Cabinet" means the Revenue Cabinet;**
- (e) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;**
- (f) "Forgivable loan agreement" means a loan agreement entered into between an agency and a borrower that establishes specific conditions, which, if satisfied by the borrower, allows the agency to forgive a portion or all of the loan; and**
- (g) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse.**

- (2) Each agency and the Court of Justice shall develop, maintain, and update in a timely manner an ongoing inventory of each debt owed to it, including debts due to improper payments, and shall make every reasonable effort to collect each debt. Within sixty (60) days after the identification of a debt, each agency shall begin administrative action to collect the debt.**
- (3) The Auditor of Public Accounts shall review each agency's debt identification and collection procedures as part of the annual audit of state agencies.**
- (4) An agency shall not forgive any debt owed to it unless that agency has entered into a forgivable loan agreement with a borrower, or unless otherwise provided by statute.**
- (5) For those agencies without statutory procedures for collecting debts, the Revenue Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to prescribe standards and procedures with which those agencies shall comply regarding collection of debts, notices to persons owing debt, information to be monitored concerning the debts, and an appeals process.**

- (6) *Each agency and the Court of Justice shall identify all liquidated debts, including debts due to improper payments, and shall submit a list of those liquidated debts in the form and manner prescribed by the cabinet to the cabinet for review. The cabinet shall review the information submitted by the agencies and the Court of Justice and shall, within ninety (90) days of receipt of the information, determine whether it would be cost-effective for the cabinet to further pursue collection of the liquidated debts.*
- (a) *The cabinet may, after consultation with the agency or the Court of Justice, return the liquidated debt to the entity submitting the liquidated debt if:*
1. *The request for review contains insufficient information; or*
 2. *The debt is not feasible to collect.*
- Any return of a liquidated debt shall be in writing, and shall state why the debt is being returned.*
- (b) *The cabinet shall identify in writing, to the submitting agency or the Court of Justice, the liquidated debts it has determined that it can pursue in a cost-effective manner, and the agency or Court of Justice shall officially refer the identified liquidated debts to the cabinet for collection.*
- (c) *The agency and the Court of Justice shall retain a complete record of all liquidated debts referred to the cabinet for collection until the debt is collected or forgiven.*
- (d) *Each agency and the Court of Justice shall make appropriate accounting of any uncollected debt as prescribed by law.*
- (7) (a) *If the agency recovers the debt funds prior to referral to the Revenue Cabinet, the agency shall retain the collected funds in accordance with its statutory authority.*
- (b) *Upon referral of a liquidated debt to the Revenue Cabinet, the liquidated debt shall accrue interest from the time of referral until paid, and a twenty-five percent (25%) collection fee shall attach unless the interest and collection fee are waived by the Revenue Cabinet. The collection fee and interest shall be in addition to any other costs accrued prior to the time of referral. The cabinet may deduct and retain from the liquidated debt recovered an amount equal to the lesser of the collection fee or the actual expenses incurred in the collection of the debt. Any funds recovered by the Revenue Cabinet after the deduction of the cabinet's cost of collection expenses shall be deposited in the general fund, except for Medicaid benefits funds and funds required by law to be remitted to a federal agency, which shall be remitted as required by law.*
- (c) *Nothing in this section shall prohibit the Revenue Cabinet from entering into a memorandum of agreement with an agency pursuant to subsection (11) of Section 5 of this Act, for collection of debts prior to liquidation. If an agency enters into an agreement with the cabinet, the agency shall retain funds collected according to the provisions of the agreement.*
- (d) *This section shall not affect any agreement between the cabinet and an agency entered into under subsection (11) of Section 5 of this Act that is in effect on the effective date of this Act that provides for the collection of liquidated debts by the cabinet on behalf of the agency.*
- (e) *This section shall not affect the collection of delinquent taxes by county attorneys under KRS 134.500.*

- (f) *This section shall not affect the collection of performance or reclamation bonds.*
- (8) *Upon receipt of a referred liquidated debt and after its determination that the debt is feasible and cost-effective to collect, the Revenue Cabinet shall pursue collection of the referred debt in accordance with Section 3 of this Act.*
- (9) *By administrative regulation promulgated under KRS Chapter 13A, the Revenue Cabinet shall prescribe the electronic format and form of, and the information required in, a referral.*
- (10) (a) *The Revenue Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the collection of debts, including debts due to improper payments. The report shall include the total amount by agency and fund type of liquidated debt that has been referred to the cabinet; the amount of each referring agency's liquidated debt, by fund type, that has been collected by the cabinet; and the total amount of each referring agency's liquidated debt, by fund type, that the cabinet determined to be cost-ineffective to collect, including the reasons for the determinations.*
- (b) *Each cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on:*
1. *The amount of previous fiscal year unliquidated debt by agency, including debts due to improper payments, fund type, category, and age, the latter to be categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years; and*
 2. *The amount, by agency, of liquidated debt, including debts due to improper payments, not referred to the Revenue Cabinet; a summary, by criteria listed in paragraph (a) of subsection (6) of Section 1 of this Act, of reasons the Revenue Cabinet provided for not requesting referral of those liquidated debts; and a summary of the actions each agency is taking to collect those liquidated debts.*
- (c) *Beginning on October 1, 2005, the Court of Justice shall report annually by October 1 of each year to the Interim Joint Committee on Appropriations and Revenue the amount of previous fiscal year unliquidated debt by county and whether in the Circuit Court or District Court; and fund type and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years. The first year for which the Court of Justice shall be required to report is the fiscal year beginning on July 1, 2004 and ending on June 30, 2005. The Court of Justice shall not be required to report unliquidated debts in existence prior to July 1, 2004.*
- (d) *The Finance and Administration Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the amount of the General Government Cabinet's unliquidated debt by agency, fund type, and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years.*
- (11) *At the time of submission of a liquidated debt to the Revenue Cabinet for review, the referring agency or the Court of Justice shall provide information about the debt to the State Treasurer for the Treasurer's action under subsection (1) of Section 2 of this Act.*

Section 2. KRS 44.030 is amended to read as follows:

- (1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when he or his assignor is indebted to the state. The claim, to the extent it is allowed, shall be credited to the account of the person so indebted, and if there is any balance due him after settling the whole demand of the state ~~that~~^{such} balance shall be paid to him.
- (2) The Finance and Administration Cabinet shall provide the Cabinet for Families and Children with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Families and Children shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.
- (3) ***Each organizational unit and administrative body in the executive branch of state government, as defined in KRS 12.010, and the Court of Justice in the judicial branch of state government shall provide information to the State Treasurer concerning any debt it has referred to the Revenue Cabinet for collection under Section 1 of this Act.***

Section 3. KRS 131.030 is amended to read as follows:

- (1) The Revenue Cabinet shall exercise all administrative functions of the state in relation to the state revenue and tax laws, the licensing and registering of motor vehicles, the equalization of tax assessments, the assessment of public utilities and public service corporations for taxes, the assessment of franchises, the supervision of tax collections, and the enforcement of revenue and tax laws, either directly or through supervision of tax administration activity in other departments to which the Revenue Cabinet may commit administration of certain taxes.
- (2) The Revenue Cabinet shall have all the powers and duties with reference to assessment or equalization of the assessment of property heretofore exercised or performed by any state board or commission.
- (3) The Revenue Cabinet shall have all the powers and duties necessary to consider and settle tax cases under KRS 131.110 and refund claims made under KRS 134.580. The Revenue Cabinet is encouraged to settle controversies on a fair and equitable basis and shall be authorized to settle tax controversies based on the hazards of litigation applicable to them.
- (4) ***The Revenue Cabinet shall have all the powers and duties necessary to collect any debts owed to the Commonwealth that are referred to the cabinet by an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010, and by the Court of Justice in the judicial branch of state government under Section 1 of this Act.***

Section 4. KRS 131.565 is amended to read as follows:

- (1) ***For purposes of this section, "state agency" or "state agencies" shall include the Court of Justice as defined in Section 1 of this Act.***
- (2) No state agency shall request the withholding of any individual income tax refund unless there is specific ~~statutory~~ provision ***in statute or administrative regulation*** for debtor appeal and hearing rights for that particular debt.
- (3)~~(2)~~ State agencies ***having the statutory and regulatory provisions described in subsection (2) of this section shall***~~desiring to~~ establish claims against Kentucky

individual income tax refunds **by notifying**~~[shall notify]~~ the secretary of revenue in writing~~[of such intention]~~ by a date established by the Revenue Cabinet and, by **dates agreed to by the Revenue Cabinet and each state agency**~~[the following December 31]~~, shall furnish a list of all liquidated debts due the agency for which withholding is **required**~~[requested]~~ for individual income tax refunds due to be paid **to the debtor of the claimant agency**~~[during the next calendar year]~~. **This**~~[Such]~~ list shall be submitted in such form and contain such information as may be required by the secretary of revenue to facilitate identification of the refunds to be withheld. As used in this section the term "liquidated debt" means a legal debt for a sum certain, which has been certified by the claimant agency as final due and owing. The claimant agency must have made reasonable efforts to collect such debt, and must have provided the debtor the opportunity for appeal and formal hearing as provided by statute. The claimant agency **shall**~~[must]~~ send thirty (30) days' prior written notification to the debtor of the intention to submit the claim to the Revenue Cabinet for setoff as provided in KRS 131.570.

- ~~(4)~~~~(3)~~ The individual income tax refund withholding procedures provided in KRS 131.560 to 131.595 shall be in lieu of the procedures set forth in KRS 427.130 and 44.030 only with regard to sums due to a debtor from the Revenue Cabinet.
- ~~(5)~~~~(4)~~ No state agency shall request the withholding of any individual income tax refund unless the debt for which withholding is requested is in a liquidated amount.
- ~~(6)~~~~(5)~~ Each state agency requesting the withholding of any individual income tax refund shall indemnify the Revenue Cabinet against any and all damages, court costs, attorneys fees and any other expenses related to litigation which arises concerning the administration of KRS 131.560 to 131.595 as it pertains to a refund withholding action requested by such agency.
- ~~(7)~~~~(6)~~ Those state agencies requesting the withholding of individual income tax refunds shall, on a per unit cost or other equitable basis determined by the Revenue Cabinet, reimburse the Revenue Cabinet for all development, implementation and administration costs incurred but not otherwise funded under the provisions of KRS 131.560 to 131.595.
- ~~(8)~~~~(7)~~ ~~[During the development and implementation phase and the first full year of operation of the program,]~~The Revenue Cabinet may **decline the withholding of individual income tax refunds from agencies if the request would adversely impact the operation of the Revenue Cabinet**~~[limit agency participation in the program to ensure orderly implementation of the system]~~.

Section 5. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Revenue Cabinet:

- (1) The cabinet may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.
- (2) The cabinet, by representatives appointed by it in writing, may take testimony or depositions, and may examine the records, documents, files, and equipment of any taxpayer or of any person whose records, documents, or equipment will furnish knowledge concerning the tax liability of any taxpayer, when it deems this reasonably necessary for purposes incident to the performance of its functions. The cabinet may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his

principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the cabinet.

- (3) The cabinet shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.
- (4) The cabinet shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Revenue Cabinet attorney undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the cabinet or at the request of the secretary of the Revenue Cabinet, the Attorney General or his designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The cabinet may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the cabinet for administration.
- (8) The cabinet may conduct research in the fields of taxation, finance, and local government administration, and publish its findings, as the secretary may deem wise.
- (9) The cabinet may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require such taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) The cabinet may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, the motor fuels tax, or the petroleum environmental assurance fee.
- (11) The cabinet may enter into annual memoranda of agreement with any state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization to assume the collection duties for any ~~liquidated~~ debts due the state entity and may renew

that agreement for up to five (5) years. Under such an agreement, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of those liquidated debts as provided under:

- (a) KRS Chapters 131, 134, and 135 for the collection, refund, and administration of delinquent taxes; and
- (b) Any applicable statutory provisions governing the state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization for the collection, refund, and administration of any liquidated debts due the state entity.

Section 6. KRS 131.585 is amended to read as follows:

There is hereby created within the Revenue Cabinet a state debt offset account, which will be subject to the provisions of the restricted fund group, as provided in KRS 48.010(13)(f), and all funds collected under KRS 131.565(6)~~[(5)]~~ shall be credited thereto with only the expenses of the Revenue Cabinet related to development, implementation and administration of KRS 131.560 to 131.595 to be paid therefrom. This account shall not lapse.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

- (1) *The Court of Justice shall initiate, by October 1, 2004, fully implement by October 1, 2005, and thereafter maintain a system for tracking and identifying debts.*
- (2) *The Court of Justice, Justice Cabinet, and Revenue Cabinet shall collaborate to implement a system, if feasible, to identify and collect liquidated debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually to the Legislative Research Commission beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.*

Approved April 9, 2004