

CHAPTER 142

(HB 292)

AN ACT relating to revenue and taxation and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, "nursing facility services" means services provided by a licensed skilled care facility, nursing facility, nursing home, or intermediate care facility, excluding intermediate care facilities for the mentally retarded.*
- (2) In addition to the tax imposed KRS 142.307 on nursing facility services, a provider assessment is hereby imposed at a uniform rate per non-Medicare patient day equal to two percent (2.0%) of gross revenues received by all nursing facilities on or after July 1, 2004 for the provision of nursing facility services.*
- (3) In addition to the assessment levied under subsection (2) of this section, and the tax imposed by KRS 142.307, an additional assessment on nursing facility services shall be imposed per non-Medicare patient day not to exceed four percent (4%) of gross revenue from the provision of nursing facility services. This assessment shall be imposed on all nursing facilities except acute-care based skilled nursing facilities, intermediate care facilities, or nursing facilities. The second assessment is not required to be uniform, and the rate of assessment per non-Medicare day may be variable based upon a facility's total annual census days if deemed an acceptable waived class by the Centers for Medicare and Medicaid Services.*
- (4) All revenues collected pursuant to subsections (2) and (3) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.*
- (5) The Department for Medicaid Services shall promulgate administrative regulations to ensure that a portion of the revenues generated from the assessment imposed by subsection (3) of this section and federal matching funds be used to increase reimbursement rates for nursing facilities. The regulations shall, at a minimum:
 - (a) Provide that the rate increases shall be used to fully phase in those providers whose current rates are less than the Medicaid price-based rates;*
 - (b) Correct for inflation adjustments for the past two (2) years; and*
 - (c) Re-base the rates to recognize current wage and benefit levels in the industry.**
- (6) The remaining revenue generated by the assessments levied under subsections (2) and (3) of this section and federal matching funds shall be used to supplement the medical assistance related general fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.*
- (7) On or before July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Federal Centers for Medicare and Medicaid Services to request a waiver of the uniformity tax requirement pursuant to 42 CFR 433.68(e)(2). If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid*

Services may resubmit the application with appropriate changes to receive an approved waiver.

- (8) *Assessments imposed pursuant to this section shall begin on July 1, 2004, but are not due and payable until rates are increased as provided in subsection (5) of this section.*
- (9) *The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the tax imposed by KRS 142.307 on intermediate care facility services for the mentally retarded, an additional assessment is hereby imposed at a uniform rate of five and one-half percent (5.5%) on gross revenues received by each provider after July 1, 2004, for the provision of intermediate care facility services for the mentally retarded and the provision of services through, or identical to those provided under, the Supports for Community Living Waiver Program.*
- (2) *All revenues collected pursuant to subsection (1) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.*
- (3) *The Department for Medicaid Services shall promulgate regulations to ensure that a portion of the revenues generated from the assessment levied under this section and federal matching funds shall be used for rate increases for intermediate care facility services for the mentally retarded and providers of services through, or identical to those provided under, the Supports for Community Living Waiver Program to recognize cost increases including current wage and benefit levels in the industry.*
- (4) *The remaining revenue generated from the assessment levied under this section and federal matching funds shall be used to supplement the medical assistance related General Fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.*
- (5) *On or before the July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Centers for Medicare and Medicaid Services to request a waiver of the uniformity requirement pursuant to 42 CFR 433.68(e)(2).*
- (6) *If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.*
- (7) *The assessment imposed pursuant to this section shall begin on July 1, 2004, but is not due and payable until rates are increased pursuant to this provision.*
- (8) *The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of KRS 154.20-254, 154.20-255, and 154.20-258, an investment fund approved by the Kentucky Economic Development Finance Authority after July 1, 2004, and otherwise qualified for tax credits pursuant to the Kentucky Investment Fund Act as set forth in KRS 154.20-250 to 154.20-284, may invest up to one hundred percent (100%) of its committed cash contributions in a single knowledge-based entity. A city, county, other local governmental entity, or any entity approved by the Kentucky Economic Development Finance Authority, may invest in an investment fund created for this purpose and may transfer, for some or no consideration, any or all of the tax credits received pursuant to Kentucky Investment Fund Act to a private entity. The Kentucky Economic Development Finance Authority shall have discretion to approve or deny applications for entities seeking credits pursuant to this section.

Section 4. KRS 136.071 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter, a ***bank holding company as defined in KRS 287.900*** ~~that [corporation whose commercial domicile is in this state and]~~ holds directly or indirectly stock or securities in ***financial institutions subject to the tax imposed by KRS 136.500 to 136.570*** ~~[other corporations]~~ equal to or greater than fifty percent (50%) of its total assets may, at the option of the taxpayer, ~~[be considered as one (1) corporation for purposes of determining and apportioning total "capital," or]~~ compute its "capital" under KRS 136.070(2) as follows:
 - (a) Determine the corporation's total capital as provided in KRS 136.070(2).
 - (b) Deduct from the amount determined in subsection (a) of this section, the book value of its investment in the stock and securities of any ***financial institutions subject to the tax imposed by KRS 136.500 to 136.570*** ~~[corporation]~~ in which it owns more than fifty percent (50%) of the outstanding stock ~~[of such corporation]~~.
- (2) For purposes of determining the ratio of stock and securities to total assets, the value shall be the value of the accounts as reflected on financial statements prepared for book purposes as of the last day of the calendar or fiscal year. The term "stock and securities" as used in this section means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness. The term "book value" means the value as shown on financial statements prepared for book purposes as of the last day of the calendar or fiscal year.

Section 5. KRS 136.290 is amended to read as follows:

- (1) Every federally or state chartered savings and loan association, savings bank, and other similar institutions operating solely in Kentucky shall, during January of each year, file with the Revenue Cabinet a report containing such information and in such form as the cabinet may require.
- (2) The cabinet shall fix the total value, as of January 1 of each year, of the capital of each financial institution included in subsection (1) of this section. Capital shall include certificates of deposit, savings accounts, demand deposits, undivided profits, surplus, and general reserves, excepting the share of borrowing members where the amount borrowed equals or exceeds the amount paid in by those members. ***For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax***

imposed by KRS 136.300 or Section 6 of this Act or that is exempt from state taxation by federal law. The cabinet shall immediately notify each institution of the value so fixed.

Section 6. KRS 136.310 is amended to read as follows:

- (1) Every federally or state chartered savings and loan association, savings bank, and other similar institution authorized to transact business in this state, with property and payroll within and without this state, shall, during January of each year, file with the Revenue Cabinet a report containing information and in such form as the cabinet may require.
- (2) The Revenue Cabinet shall fix the fair cash value, as of January 1 of each year, of the capital attributable to Kentucky in each financial institution included in subsection (1) of this section. The methodology employed by the cabinet shall be a three (3) step process as follows:
 - (a) The total value of deposits maintained in Kentucky less any amounts where the amount borrowed equals or exceeds the amount paid in by those members.
 - (b) The Kentucky apportioned value of capital shall include undivided profits, surplus, general reserves, and paid-up stock. *For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or this section or that is exempt from state taxation by federal law.* The Kentucky value of capital shall be determined by a fraction, the numerator of which is the receipts factor plus the outstanding loan balance factor plus the payroll factor, and the denominator of which is three (3).
 - (c) The values determined in steps (a) and (b) of this subsection shall be added together to determine total Kentucky capital and then reduced by the influence of ownership in tax-exempt United States obligations to determine Kentucky taxable capital. The influence of tax-exempt United States obligations is to be determined from the reports of condition filed with the applicable supervisory agency as follows: the average amount of tax-exempt United States obligations for the calendar year, over the average amount of total assets for the calendar year multiplied by total Kentucky capital. The cabinet shall immediately notify each institution of the value so fixed.
- (3) The receipts factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is all receipts derived from loans and other sources negotiated through offices or derived from customers in Kentucky, and the denominator of which is total business receipts for the preceding calendar year.
- (4) The outstanding loan balance factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices or made to customers in Kentucky. The denominator is the average balance of all outstanding loans. The average outstanding loan balance is determined by adding the outstanding loan balance at the beginning of the preceding calendar year to the outstanding loan balance at the end of the preceding calendar year and dividing by two (2). However, if the yearly beginning balance and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average balance.
- (5) The payroll factor specified in subsection (2)(b) of this section shall be determined for the preceding calendar year under the provisions of KRS 141.120(8)(b) and regulations promulgated thereunder.

- (6) By July 1 succeeding the filing of the report as provided in subsection (1) of this section, each financial institution included in subsection (1) of this section shall pay directly into the State Treasury a tax of one dollar (\$1) for each one thousand dollars (\$1,000) paid in on its Kentucky taxable capital as fixed in subsection (2)(c) of this section. The institution shall not be required to pay local taxes upon its capital stock, surplus, undivided profits, notes, mortgages, or other credits, and the tax provided by this section shall be in lieu of all taxes for state purposes on intangible property of the institution, nor shall any depositor of the institution be required to list his deposits for taxation under KRS 132.020. Failure to make reports and pay taxes as provided in this section shall subject the institution to the same penalties imposed for such failure on the part of the other corporations.
- (7) If a financial institution included in subsection (1) of this section selects, it may deduct taxes imposed in subsection (6) of this section from the dividends paid or credited to a nonborrowing shareholder.
- (8) *Every Agricultural Credit Association chartered by the Farm Credit Administration being authorized to transact business in Kentucky but having no employees located within or without the state shall be subject to the same tax imposed pursuant to either KRS 136.300 or this section as that imposed upon its wholly owned Production Credit Association subsidiary. For purposes of computing Kentucky apportioned value of capital pursuant to subsection (2) of this section, those Agricultural Credit Associations subject to the tax imposed by this section shall utilize that Kentucky apportionment fraction computed and utilized by its wholly owned Production Credit Association subsidiary for the same report period.*

Section 7. Section 4 of this Act shall be retroactively effective for tax periods beginning on or after January 1, 2003.

Section 8. Whereas corporate license tax returns are due April 15, 2004, it is necessary for this Act to become effective immediately. Therefore, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Section 9. Notwithstanding any statutory law or administrative regulations, any debt approved and funded by the Bluegrass State Skills Corporation or the Kentucky Economic Development Finance Authority may be renegotiated, amended, or forgiven with approval of their respective Boards. Any debt collected on behalf of the Kentucky Economic Development Finance Authority, or Bluegrass State Skills Corporation shall be returned to them subject to any reasonable fees due for services rendered by other agencies or private vendors in collecting the debt on their behalf and shall not be deemed general funds.

Approved April 22, 2004