

## CHAPTER 112

## (HB 498)

AN ACT relating to the refund or recovery of taxes.

WHEREAS, the General Assembly has been made aware that technical nonsubstantive changes made to the tax refund statute, KRS 134.590, in 1996 are being interpreted by litigants and courts as making a substantive change that would allow the bringing or maintenance of class actions for the recovery or refund of taxes against the Commonwealth and its political subdivisions and taxing districts; and

WHEREAS, it appears to the General Assembly that similar interpretations are or have been advocated or adopted concerning other tax refund statutes, or that similar uncertainty exists with respect to other tax refund statutes; and

WHEREAS, the General Assembly wishes to make it clear that each taxpayer must file an individual refund claim and that the filing of a class action lawsuit does not constitute a timely filing for each member or the class, and clarify other procedural requirements of the tax refund statutes;

NOW, THEREFORE,

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

Section 1. KRS 134.580 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Agency" means the agency of state government which administers the tax to be refunded or credited.
  - (b) "Overpayment" or "payment where no tax was due" means the tax liability under the terms of the applicable statute without reference to the constitutionality of the statute.
- (2) When money has been paid into the State Treasury in payment of any state taxes, except ad valorem taxes, whether payment was made voluntarily or involuntarily, the appropriate agency shall authorize refunds ~~or credits,~~ to the person who paid the tax, or to his heirs, personal representatives or assigns, of any overpayment of tax and any payment where no tax was due. When a bona fide controversy exists between the agency and the taxpayer as to the liability of the taxpayer for the payment of tax claimed to be due by the agency, the taxpayer may pay the amount claimed by the agency to be due, and if an appeal is taken by the taxpayer from the ruling of the agency within the time provided by KRS 131.340 and it is finally adjudged that the taxpayer was not liable for the payment of the tax or any part thereof, the agency shall authorize the refund or credit as the Kentucky Board of Tax Appeals or courts may direct.
- (3) ***No refund shall be made unless each taxpayer individually files an application or claim for the refund within four (4) years from the date payment was made. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 131.110 and 131.340.***
- (4) Refunds ~~or credits~~ shall be authorized with interest as provided in KRS 131.183. The refunds authorized by this section shall be made in the same manner as other claims on the

State Treasury are paid. They shall not be charged against any appropriation, but shall be deducted from tax receipts for the current fiscal year.

- (5)~~(4)~~ Nothing in this section shall be construed to authorize the agency to make or cause to be made any refund except within four (4) years of the date prescribed by law for the filing of a return including any extension of time for filing the return, or the date the money was paid into the State Treasury, whichever is the later, except in any case where the assessment period has been extended by written agreement between the taxpayer and the cabinet, the limitation contained in this subsection shall be extended accordingly. Nothing in this section shall be construed as requiring the agency to authorize any refund ~~or credit~~ to a taxpayer without demand from the taxpayer, if in the opinion of the agency the cost to the state of authorizing the refund ~~or credit~~ would be greater than the amount that should be refunded or credited.
- (6)~~(5)~~ This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (7)~~(6)~~ In cases in which a statute has been held unconstitutional, taxes paid thereunder may be refunded to the extent provided by KRS 134.590, and by the statute held unconstitutional.

Section 2. KRS 134.590 is amended to read as follows:

- (1) When ~~it appears to~~ the appropriate *state government* agency *determines* ~~of state government~~ that *a taxpayer has paid ad valorem taxes into the state treasury* ~~money has been paid into the State Treasury for ad valorem taxes~~ when no taxes were ~~in fact~~ due or *has* ~~for taxes of any kind~~ paid under a statute held unconstitutional, the *state government* agency  ~~of state government~~ which administers the tax shall refund the money, or cause it to be refunded, to the person who paid the tax. *The state government agency* ~~No refund or credit~~ shall *not authorize a refund* ~~be authorized~~ to a person who has *paid* ~~made payment of~~ the tax due on any tract of land unless *the taxpayer has paid* the entire tax due the state on the land ~~has been paid~~.
- (2) No *state government agency shall authorize a* refund ~~shall be made~~ unless *each taxpayer individually applies for a* ~~an application for~~ refund ~~is made~~ within two (2) years from the *date the taxpayer paid the tax* ~~time payment was made~~. *Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 131.110 and 131.340.* No *state government agency shall* refund ~~for~~ ad valorem taxes, except those held unconstitutional, ~~shall be made~~ unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.
- (3) *If a taxpayer pays* ~~When it has been determined that~~ city, urban-county, county, school district, consolidated local government, or special district ad valorem taxes ~~have been paid~~ to a city, urban-county, county, school district, consolidated local government, or special district when no taxes were due or the amount paid *exceeded* ~~was in excess of~~ the amount finally determined to be due, the taxes shall be refunded to the person who paid the tax.
- (4) Refunds of ad valorem taxes shall be authorized by the mayor or chief finance officer of any city, consolidated local government, or urban-county government for the city, consolidated local government, or urban-county government or for any special district for which the city,

consolidated local government, or urban-county government is the levying authority, by the county judge/executive of any county for the county or special district for which the fiscal court is the levying authority, or by the chairman or finance officer of any district board of education.

- (5) Upon proper authorization, the sheriff or collector shall refund the taxes from current tax collections *he or she holds* ~~held by the sheriff or collector~~. If there are no such funds, *the district's finance officer shall make the* refunds ~~shall be made by the finance officer of the district~~. The sheriff or collector shall receive credit *on the next collection report to the district* for any refunds ~~made by~~ the sheriff or collector *makes* ~~on the next collection report to the district~~.
- (6) No refund shall be made unless *each taxpayer individually applies* ~~an application is made~~ within two (2) years from the date payment was made. If the amount of taxes due is in litigation, the *taxpayer shall individually apply* ~~application~~ for refund ~~shall be made~~ within two (2) years from the date the amount due is finally determined. *Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based.* No refund for ad valorem taxes, except those held unconstitutional, shall be made unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.
- (7) Notwithstanding other statutory provisions, for property subject to a tax rate that is set each year based on the certified assessment, *a taxing district may recover* any loss of ad valorem tax revenue *it suffers* ~~suffered by a taxing district~~ due to the issuance of refunds ~~may be recovered~~ by *adjusting* ~~making an adjustment in~~ the ~~tax rate for~~ the following tax *year's tax rate* ~~year~~.

Section 3. KRS 160.637 is amended to read as follows:

- (1) "Requesting school districts" shall mean those school districts for which the Revenue Cabinet is requested to act as tax collector under the authority of KRS 160.627(2).
- (2) Reasonable expenses not to exceed the actual costs of collection incurred by any tax collector, except the Revenue Cabinet, for the administration or collection of the school taxes authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 shall be reimbursed by the school district boards of education on a monthly basis or on the basis agreed upon by the boards of education and the tax collector. The expenses shall be borne by the school districts on a basis proportionate to the revenue received by the districts.
- (3) The following shall apply only when the Revenue Cabinet is acting as tax collector under the authority of KRS 160.627(2):
  - (a) When the cabinet is initially requested to be the tax collector under KRS 160.627(2), the cabinet shall estimate the costs of implementing the administration of the tax so requested, and shall inform the requesting school district of this estimated cost. The requesting school district shall pay to the cabinet ten percent (10%) of this estimated cost referred to as "start-up costs" within thirty (30) days of notification by the cabinet. Subsequent requesting school districts shall pay their pro rata share, or ten percent (10%), whichever is less, of the unpaid balance of the initial "start-up costs" until the cabinet has fully recovered the costs. The payment shall be made within thirty (30) days of notification by the cabinet.

- (b) The Revenue Cabinet shall also be reimbursed by each school district for its proportionate share of the actual operational expenses incurred by the cabinet in collecting the excise tax. The expenses, which shall be deducted by the Revenue Cabinet from payments to school districts made under the provisions of KRS 160.627(2), shall be allocated by the cabinet to school districts on a basis proportionate to the number of returns processed by the Revenue Cabinet for each district compared to the total processed by the Revenue Cabinet for all districts.
- (c) All funds received by the cabinet under the authority of paragraphs (a) and (b) of this subsection shall be deposited into an account entitled the "school tax fund account," an account created within the restricted fund group set forth in KRS 45.305. The use of these funds shall be restricted to paying the cabinet for the costs described in paragraphs (a) and (b) of this subsection. This account shall not lapse.
- (d) The cabinet may retain a portion of the school tax revenues collected in a special account entitled the "school tax refund account" which is an account created within the restricted fund group set forth in KRS 45.305. The sole purpose of this account shall be to authorize the Revenue Cabinet to refund school taxes. This account shall not lapse. Refunds shall be made in accordance with the provisions in KRS 134.580(5){(4)}, and when the taxpayer has made an overpayment or a payment where no tax was due as defined in KRS 134.580(6){(5)}, within four (4) years of payment.
- (e) KRS 160.621 notwithstanding, when the cabinet is acting as tax collector under the authority of KRS 160.627(2), the requesting school district may enact the tax enumerated in KRS 160.621 only at the following rates: five percent (5%), ten percent (10%), fifteen percent (15%), and twenty percent (20%) on a school district resident's state individual income tax liability as computed under KRS Chapter 141.
- (f) Beginning August 1, 1982, any school district which requests the cabinet to collect taxes under the authority of KRS 160.627(2) shall inform the cabinet of this request not less than one hundred fifty (150) days prior to January 1.
- (g) The cabinet shall not be required to collect taxes authorized in KRS 160.621 of an individual when the cabinet is not pursuing collection of that individual's state income taxes. The cabinet shall not be required to collect or defend the tax set forth in KRS 160.621 in any board or court of this state.
- (h) Any overpayments of the tax set forth in KRS 141.020 or payments made when no tax was due may be applied to any tax liability arising under KRS 160.621 before a refund is authorized to the taxpayer. No individual's tax payment shall be credited to the tax set forth in KRS 160.621 until all outstanding state income tax liabilities of that individual have been paid.
- (i) KRS 160.510 notwithstanding, the State Auditor shall be the only party authorized to audit the Revenue Cabinet with respect to the performance of its duties under KRS 160.621.

**Approved March 18, 2005.**