

**CHAPTER 153****(HB 116)**

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;
- (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 of goods, services, or property by a business entity reduced by the following:
  - (a) Sales and excise taxes paid; and
  - (b) Returns and allowances;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~2004~~[2003], exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~2004~~[2003], that would otherwise terminate;
- (8) "Net profit" 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) "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, as apportioned under KRS 67.753;
  - (12) "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) "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) "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, as apportioned under KRS 67.753; and
  - (15) "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 65.6851 is amended to read as follows:

For any development area for which increments do not include revenues from the Commonwealth:

- (1) Any governing body establishing a development area may impose an assessment on each person employed in the development area, as a condition of employment, whose job was newly created as a result of a project, and as determined by the policies and procedures established by the governing body, subject to the conditions in subsection (6) of this section, and who is subject to the state tax imposed by KRS 141.020. A job shall not be deemed to be newly created under this section if it occurs due to the relocation of jobs from another location within the Commonwealth.

- (2) Subject to KRS 65.6853, the total assessment levied by ~~any~~~~all the~~ governing ~~body~~~~bodies~~ within the development area shall not exceed an amount equal to two percent (2%) of the gross wages of the employee.
- (3) Each person so assessed shall be entitled to credits against *any* local occupational license *fee or payroll tax of the governing body that established the development area and the job development assessment fee*~~fees~~, if ~~an~~~~a local~~ occupational license fee is then *levied by that governing body and is*~~in existence and~~ not otherwise totally used as a credit against assessments imposed under Subchapter 23, 24, or 26 of KRS Chapter 154, *and provided that the amount does not exceed the amount of the occupational licensing fee or payroll tax paid to that local government by the employee*~~equal to the assessment withheld from wages during the calendar year so long as the amount does not exceed the amount of the assessment itself~~. *If the governing body that created the job development assessment fee has no occupational license fee, the employee shall not be entitled to receive a credit against any other governmental agency's occupational license fee.*
- (4) Subsequent to the establishment of a development area by one (1) governing body, no other governing body may levy an assessment in any portion of the development area that would cause the total assessment in any portion of the development area to exceed two percent (2%) of the gross wages of the employee, subject to KRS 65.6853. If more than one (1) governing body jointly establishes a development area, the governing bodies that establish the development area shall agree upon the amount of the assessment and the manner by which the assessment is to be prorated among the governing bodies establishing the development area.
- (5) Any assessment of employees in connection with their employment at a project levied under this section shall permanently lapse on the date:
  - (a) Any bonds issued in connection with acquiring or developing the infrastructure of a development area, in accordance with KRS 65.680 to 65.699, are retired; or
  - (b) Any loans or other financing incurred in connection with the establishment of a development area mature or are prepaid in full.
- (6) For the purposes of this section:
  - (a) The development area shall be a previously undeveloped tract of land;
  - (b) No more than five hundred (500) acres may be approved in any twelve (12) month period in any county; and
  - (c) Acceptable developments shall be limited to projects as defined in KRS 65.680.
- (7) Any agency that has established a development area under KRS 65.680 to 65.699 prior to July 15, 2002, unless otherwise approved by the agency, shall continue to operate under the provisions of KRS 65.680 to 65.699 as determined by the policies and procedures established by the agency prior to July 15, 2002.

Section 3. KRS 67.795 is amended to read as follows:

The provisions of KRS 67.750 to 67.790 shall apply on and after **July 15, 2008**~~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. 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, by adoption of an ordinance prior to *July 15, 2008*~~[January 1, 2006]~~.

**Approved March 18, 2005.**