

CHAPTER 22

(HB 316)

AN ACT relating to certain tax refund suits and declaring an emergency.

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 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 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) 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 department, 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 to a taxpayer without demand from the taxpayer, if in the opinion of the agency the cost to the state of authorizing the refund would be greater than the amount that should be refunded or credited.
- (6) This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (7) 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.
- (8) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the person holds an unrevoked refund permit issued by the department before the purchase of gasoline or special fuels and that permit entitles the person to apply for a refund under KRS 138.344 to 138.355.
- (9) *Notwithstanding any provision of the KRS to the contrary:*
 - (a) *The Commonwealth hereby revokes and withdraws its consent to suit in any forum whatsoever on any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return. No such claim shall be effective or recognized for any purpose.*
 - (b) *Any stated or implied consent for the Commonwealth of Kentucky, or any agent or officer of the Commonwealth of Kentucky, to be sued by any person for any legal, equitable, or other relief with*

respect to any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, is hereby withdrawn.

- (c) *The provisions of this subsection shall apply retroactively for all taxable years ending before December 31, 1995, and shall apply to all claims for such taxable years pending in any judicial or administrative forum.*

(10) Notwithstanding any provision of the KRS to the contrary:

- (a) *No money shall be drawn from the State Treasury for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.*
- (b) *No provision of the Kentucky Revised Statutes shall constitute an appropriation or mandated appropriation for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.*

Section 2. Whereas recent judicial decisions and refund suits based on combined returns or consolidated returns described in subsections (9) and (10) of Section 1 of this Act could result in catastrophic losses of public revenues desperately needed to fund education, social services, and public improvements projects and initiatives for the benefit of the Commonwealth and all its citizens; and, whereas the immunity of the Commonwealth as the sovereign from suit without the consent of the General Assembly is absolute and unqualified; and, whereas no money shall be drawn from the State Treasury, except in pursuance of appropriations made by law, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or its otherwise becoming a law.

Approved March 19, 2007.