

CHAPTER 147**(HB 319)**

AN ACT relating to taxation.

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

➔Section 1. KRS 131.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Commissioner" means the commissioner of revenue;~~;~~
- (2) "Department" means the Department of Revenue;~~;~~
- (3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any individual or corporation acting in a fiduciary capacity for any other person;~~;~~
- (4) "Taxpayer" means any person required or permitted by law or administrative regulation to perform any act subject to the administrative jurisdiction of the department including the following:
 - (a) File a report, return, statement, certification, claim, estimate, declaration, form, or other document;
 - (b) Furnish any information;
 - (c) Withhold, collect, or pay any tax, installment, estimate, or other funds;
 - (d) Secure any license, permit, or other authorization to conduct a business or exercise any privilege, right, or responsibility;~~;~~
- (5) "Adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of governors of the Federal Reserve System;~~;~~
- (6) "Tax interest rate" means the interest rate determined under KRS 131.183;~~;~~
- (7) "Tax" includes any assessment or license fee administered by the department; however, it shall not include moneys withheld or collected by the department pursuant to KRS 131.560 or 160.627;~~;~~
- (8) "Return" or "report" means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the department, including returns and reports or composites thereof which are permitted or required to be electronically transmitted;~~;~~
- (9) "Reasonable cause" means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation;~~;~~
- (10) "Fraud" means:
 - (a) Intentional or reckless disregard for the law, administrative regulations, or the department's established policies to evade the filing of any return, report, or the payment of any moneys due to the department pursuant to law or administrative regulation; or
 - (b) The deliberate false reporting of returns or reports with the intent to gain a monetary advantage;~~;~~
- (11) "Hard copy" means any document, record, report, or other data printed on paper or stored by an imaging system that does not permit additions, deletions, or other changes to the original documents;~~;~~
- (12) "Electronic record" means a collection of related information stored as bits of data in a medium that supports electronic extraction of the data at the field level, but does not include electronic imaging systems;~~;~~
- (13) "Electronic imaging systems" means a computer-based system used to store reproductions of documents and records through the use of electronic data processing, or computerized, digital, or optical scanning which records and indexes the document, but does not support electronic extraction of the data at the field level;~~;~~
- (14) ***"Electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made; and***

(15) *"Specified tax return preparer" means the same as in 26 U.S.C. sec. 6011(e)(3).*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purpose of facilitating the administration of the taxes it administers, the department may require any tax return, report, or statement to be electronically filed.*
- (2) *The following reports, returns, or statements shall be electronically filed:*
- (a) *The return required by KRS 136.620;*
 - (b) *For tax periods beginning on or after January 1, 2007, the report required by KRS 138.240;*
 - (c) *For tax periods beginning on or after August 1, 2010, the report required by KRS 138.260;*
 - (d) *For taxable years beginning on or after January 1, 2010, the return filed by a specified tax return preparer reporting the annual tax imposed by KRS 141.020, if the specified tax return preparer is required to electronically file the return for federal income tax purposes;*
 - (e) *The annual withholding statement required by KRS 141.335, if the employer issues one hundred (100) or more statements annually; and*
 - (f) *For tax periods beginning on or after July 1, 2005, the return required by KRS 160.615.*
- (3) (a) *A person required to electronically file a return, report, or statement may apply for a waiver from the requirement by submitting the request on a form prescribed by the department.*
- (b) *The request shall indicate the lack of one (1) or more of the following:*
- 1. *Compatible computer hardware;*
 - 2. *Internet access; or*
 - 3. *Other technological capabilities determined relevant by the department.*

➔Section 3. KRS 131.155 is amended to read as follows:

- (1) *For the purpose of facilitating the administration, payment, or collection of the taxes, the department may require any tax payment to be made by electronic fund transfer. [As used in this section, the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.]*
- (2) *The following payments shall be made by electronic fund transfer:*
- (a) *The payment required by KRS 136.620;*
 - (b) *For tax periods beginning on or after January 1, 2007, the payment required by KRS 138.280;*
 - (c) *For collections on or after August 1, 2010, the clerk shall deposit motor vehicle usage tax and sales and use tax collections in the clerk's local depository account not later than the next business day following receipt. The clerk shall cause the funds to be electronically transferred from the clerk's local depository account to the State Treasury in the manner and at the times prescribed by the department;*
 - (d) *For any period beginning after December 31, 2000, any payment required under KRS Chapter 139, if the taxpayer's average payment per reporting period during the lookback period exceeds twenty-five thousand dollars (\$25,000);*
 - (e) *For any period beginning after December 31, 2000, any payment required under KRS 141.330, if the taxpayer's average payment per reporting period during the lookback period exceeds twenty-five thousand dollars (\$25,000); and*
 - (f) *For tax periods beginning on or after July 1, 2005, the payment required under KRS 160.615 [Notwithstanding any statutory provisions to the contrary, the department may require any person who is required to collect or remit taxes and fees administered by the department or any person who acts on the taxpayer's behalf to remit those taxes and fees to the department by electronic fund transfer. The transfer shall be made on or before the date the tax is due using the debit method or other means as prescribed by the department by the promulgation of an administrative regulation. The*

~~department may permit the filing of the tax return following the date of the tax payment. Payment by electronic fund transfer may be required if:~~

- ~~(a) The average payment per reporting period is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted;~~
 - ~~(b) The payment for each tax or fee required to be collected or remitted is made on behalf of one hundred (100) or more taxpayers; or~~
 - ~~(c) The aggregate of the funds to be remitted on behalf of others is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted}.~~
- (3) (a) *The electronic fund transfer shall be made on or before the date the tax is due.*
 - (b) *The department may permit the filing of the tax return following the date of the tax payment.*
 - (c) The department shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the department.
- (4) The department may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.
 - (5) Taxpayers and any other persons who are required to collect or remit taxes administered by the department by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees, on or after July 1, 2001, by electronic fund transfer.

➔Section 4. KRS 131.990 is amended to read as follows:

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
 - (2) (a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
 - (b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
 - (e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department~~[of Revenue]~~, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the department~~[of Revenue]~~ for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
 - (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
 - (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.
 - (6) (a) Any person or financial institution that fails to comply with the provisions of KRS 131.672 and 131.674 within ninety (90) days after notification by the department~~[of Revenue]~~ shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and

no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.

- (b) Any financial institution that fails or refuses to comply with the provisions of KRS 131.672 and 131.674 within one hundred twenty (120) days after the notification by the department~~[of Revenue]~~ shall, unless the failure is due to reasonable cause as defined in KRS 131.010, forfeit its right to do business within the Commonwealth, unless and until the financial institution is in compliance. Upon notification by the department~~[of Revenue]~~, the executive director of the Office of Financial Institutions shall, as applicable, revoke the authority of the financial institution or its agents to do business in the Commonwealth.

- (7) ***Any taxpayer or tax return preparer who fails or refuses to comply with the provisions of Section 2 of this Act or an administrative regulation promulgated under Section 2 of this Act shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each return not filed as required.***

➔Section 5. KRS 136.620 is amended to read as follows:

- (1) The taxes imposed by KRS 136.604 and 136.616 are due and payable monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.
- (2) On or before the twentieth day of each month, every provider shall file a return for the preceding month with the department in the form prescribed by the department, together with payment of any tax due. The department may allow a provider subject to the taxes imposed under KRS 136.604 and 136.616 to file a single return reporting tax liabilities under both taxes for each reporting period.
- (3) The return shall show the:
- Gross revenues received subject to the tax imposed under KRS 136.616;
 - Amount billed by the provider for multichannel video programming service subject to the tax imposed under KRS 136.604;
 - Amount of the tax due under KRS 136.604 and 136.616; and
 - Any other information as the department deems necessary for the proper administration of KRS 136.600 to 136.660.
- (4) In the case where the purchaser is liable for the payment of the tax under KRS 136.606(2), the purchaser shall file the return showing the total amount paid for multichannel video programming service that is subject to tax during the reporting period.
- (5) The return shall be signed by the person required to file the return or a duly authorized agent.
- (6) The person required to file the return shall deliver the return, together with a remittance of the amount of tax due, to the department.
- ~~(7) For the purpose of facilitating the administration, payment, or collection of the taxes levied under KRS 136.600 to 136.660, the department may permit or require returns to be filed or tax payments to be made other than as specifically required by the provisions of this section.~~
- ~~(8)~~ For purposes of calculating the excise tax imposed under KRS 136.604, if tangible personal property normally subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, and the tangible personal property is necessary for the provision of the multichannel video programming service, the tax required to be collected by the provider shall be the tax imposed by KRS 136.604.
- ~~(8)~~~~(9)~~ For purposes of calculating the excise tax imposed under KRS 136.604, if communications services subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, the portion of the sales price attributable to the communications services shall be subject to the excise tax unless the provider can identify, by reasonable and verifiable standards, the communications services from its books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

~~(9)~~~~(10)~~ For purposes of calculating the gross revenues tax imposed under KRS 136.616, if communications service is sold with multichannel video programming service as a single package for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%).

~~(10)~~~~(11)~~ For purposes of calculating the gross revenues tax imposed under KRS 136.616, if tangible personal property is sold with:

- (a) Multichannel video programming service for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%); and
- (b) Communications service for one (1) price, the gross revenues shall be taxed at the rate of one and three-tenths percent (1.3%).

➔Section 6. KRS 138.240 is amended to read as follows:

(1) Every gasoline dealer and every special fuel dealer shall, by the twenty-fifth day of each month, transmit to the department ~~of Revenue~~ reports on the forms the department may prescribe, of the total number of gallons of gasoline and special fuel received in this state during the next preceding calendar month. ~~For tax periods beginning on or after January 1, 2007, the report shall be submitted electronically in a manner prescribed by the department.~~ This report shall include the following information:

- (a) An itemized statement of the number of gallons received that have been produced, refined, manufactured, or compounded by the dealer in this state during the next preceding calendar month; and
- (b) An itemized statement of the number of gallons received by the dealer in this state from any source during the next preceding calendar month, as shown by shippers' invoices, other than the gasoline and special fuel falling within the provisions of paragraph (a) of this subsection, together with a statement showing the date of receipt, the name of the person from whom purchased, the date of receipt of each shipment, the point of origin and the point of destination, the quantity of each purchase or shipment, the name of the carrier, the initials and number of each tank car, the date of receipt, and the number of gallons contained in each car if shipped by rail or the name and owner of the boat, ship, truck, transport, barge, or vessel if shipped by water.

(2) The reports required by subsection (1) of this section shall also contain an itemized statement of the number of gallons received by the dealer during the preceding calendar month of:

- (a) Bulk sales of gasoline or bulk sales of special fuels sold to the United States government for use exclusively in equipment or vehicles owned or leased by the United States government;
- (b) Gasoline and special fuels sold for delivery in this state in transport truck, tank car, or cargo lots to licensed bonded dealers. The statement shall give a record of all such transport truck, tank car, or cargo sales, giving the date of shipment, the number of gallons contained in each shipment, the name of owner and license number of truck if shipped by transport truck, the initials and number of the tank car if shipped by rail, the name and owner of the boat, barge, or vessel, and the number of gallons contained therein if shipped by water, and the name of the person to whom sold, point of shipment, and point of delivery;
- (c) Gasoline and special fuels lost through accountable losses;
- (d) Gasoline and special fuel exported from this state to any other state in transport truck, tank car or cargo lots;
- (e) Gasoline or special fuel delivered upon or immediately adjacent to a river or stream, if:
 - 1. The gasoline or special fuel is or will be delivered into the fuel supply tank of a commercial ship or vessel which has a valid certificate of documentation issued by the United States Coast Guard; and
 - 2. All the fuel will be used exclusively in the operation of a commercial ship or vessel.
- (f) Special fuel delivered to a railroad company principally engaged in the commercial transportation of property for others as a common carrier or in the conveyance of persons for hire, if the railroad company is the holder of a Kentucky motor fuels tax refund permit and certifies that the fuel is to be used exclusively for the purpose of powering locomotives and unlicensed company vehicles or

equipment for nonhighway use. Railroad company as used herein shall not include any company described in KRS 136.120(4)(a) in effect on August 1, 1988; and

(g) Special fuels used in unlicensed vehicles or equipment by licensed special fuels dealers for nonhighway purposes related to the distribution of gasoline or special fuels to others.

(3) All gasoline and special fuel gallons received or distributed by a dealer from marine terminal, refinery or pipeline terminal storage in this state shall be reported at sixty (60) degrees Fahrenheit.

~~{(4) Persons subject to the gasoline and special fuel tax may apply for a waiver from the requirement in subsection (1) of this section that the report be submitted electronically for tax periods beginning on or after January 1, 2007, by submitting a request on a form prescribed by the department. The request shall indicate the lack of one (1) or more of the following:~~

~~(a) Compatible computer hardware;~~

~~(b) Internet access; or~~

~~(c) Other technological capabilities determined relevant by the department.~~

~~(5) If a person qualifies for a waiver under subsection (4) of this section, paper reports including the information required by subsections (1) to (3) of this section shall be submitted.}~~

➔Section 7. KRS 138.280 is amended to read as follows:

(1) ~~{(a)}~~For tax periods beginning prior to January 1, 2007, the reports required by KRS 138.240 shall be accompanied by a certified or cashier's check, payable to the State Treasurer, for the amount of tax due for the preceding calendar month, computed as provided in KRS 138.270; except that the department may waive this requirement and accept the dealer's check or allow for remittance of the tax owed to the department by electronic fund transfer where the dealer is of sound financial condition and has established a good record of compliance with the requirements of KRS 138.210 to 138.340.

~~{(b) For tax periods beginning on or after January 1, 2007, the payments computed as provided in KRS 138.270 shall be transmitted electronically in a manner prescribed by the department.}~~

(2) By virtue of the allowance provided by KRS 138.270 to dealers for collecting and remitting the tax, every dealer is a trust officer of the state.

~~{(3) Persons subject to the gasoline and special fuel tax may apply for a waiver from the requirements of subsection (1)(b) of this section by submitting a request on a form prescribed by the department. The request shall indicate the lack of one (1) or more of the following:~~

~~(a) Compatible computer hardware;~~

~~(b) Internet access; or~~

~~(c) Other technological capabilities determined relevant by the department.~~

~~(4) If a person qualifies for a waiver of the electronic payment requirements established by subsection (1)(b) of this section, the reports required by KRS 138.240 shall be accompanied by a certified or cashier's check, payable to the State Treasurer, for the amount of tax due for the preceding calendar month, computed as provided in KRS 138.270.~~

~~(5) The department shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes due for the preceding calendar month and computed as provided by KRS 138.270.}~~

➔Section 8. KRS 138.464 is amended to read as follows:

(1) The county clerk shall report each Monday to the department all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period.

(2) (a) ***For collections prior to August 1, 2010***, the clerk shall deposit motor vehicle usage tax and sales and use tax collections not later than the next business day following receipt in a Commonwealth of Kentucky, department account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the department or his designee.

(b) ***For collections on or after August 1, 2010, the provisions of Section 3 of this Act shall apply.***

- (3) Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected within seven (7) working days after the report is due shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed.
- (4) Failure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars (\$50) nor more than five hundred dollars (\$500) per day.
- (5) The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause.
- (6) The department may in its discretion grant a county clerk a reasonable extension of time to file his report or make any transfer of deposits as required above. The extension, however, must be requested prior to the end of the seven (7) day period and shall begin to run at the end of said period.
- (7) All penalties collected under this provision shall be paid into the State Treasury as a part of the revenue collected under KRS 138.450 to 138.729 and 139.778.

➔Section 9. The following KRS section is repealed:

160.6145 Utility gross receipts license tax returns, payments transmitted electronically -- Waiver -- Administrative regulations.

Signed by Governor April 13, 2010.