

CHAPTER 101**(HB 444)**

AN ACT relating to taxation and declaring an emergency.

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

→Section 1. KRS 136.120 is amended to read as follows:

- (1) (a) The following public service companies shall pay a tax on their operating property to the state, and to the extent the operating property is subject to local taxation, shall pay a local tax to the county, incorporated city, and taxing district where its operating property is located:
1. Railway companies;
 2. Sleeping car companies;
 3. Chair car companies;
 4. Dining car companies;
 5. Gas companies;
 6. Water companies;
 7. Bridge companies;
 8. Street railway companies;
 9. Interurban electric railroad companies;
 10. Express companies;
 11. Electric light companies;
 12. Electric power companies;
 13. Commercial air carriers;
 14. Air freight carriers;
 15. Pipeline companies;
 16. Privately owned regulated sewer companies;
 17. Municipal solid waste disposal facilities, as defined by KRS 224.01-010(15), where solid waste is disposed by landfilling;
 18. Railroad car line companies, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car; and
 19. Every other like company or business performing any public service.
- (b) The following companies shall not be subject to the provisions of paragraph (a) of this subsection:
1. Bus line companies;
 2. Regular and irregular route common carrier trucking companies;
 3. Taxicab companies;
 4. Providers of communications service as defined in KRS 136.602;~~and~~
 5. Providers of multichannel video programming services as defined in KRS 136.602; **and**
 6. ***A qualified air freight forwarder as defined in Section 2 of this Act.***
- (2) (a) The property of the taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property.

- (b) Nonoperating intangible property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services.
 - (c) Operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.
- (3) (a) The Department of Revenue shall:
- 1. Have sole power to value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has previously been assessed by the department;
 - 2. Allocate the assessment as provided by KRS 136.170; and
 - 3. Certify operating property subject to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180.
- (b) All of the property assessed by the department pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien on the property shall attach as of the assessment date.
 - (c) In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the department shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the department under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.

➔Section 2. KRS 141.121 is amended to read as follows:

- (1) As used in this section:
- (a) ***"Affiliated airline" means an airline:***
 - 1. ***For which a qualified air freight forwarder facilitates air transportation; and***
 - 2. ***That is in the same affiliated group as a qualified air freight forwarder;***
 - (b) ***"Affiliated group" has the same meaning as in KRS 141.200;***
 - (c) "Kentucky revenue passenger miles" means the total revenue passenger miles within the borders of Kentucky for all flight stages that either originate or terminate in this state;
 - ~~(d)~~(b) "Liquid asset" means an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. "Liquid assets" include:
 - 1. Foreign currency and trading positions therein, other than functional currency used in the regular course of the corporation's trade or business;
 - 2. Marketable instruments, including stocks, bonds, debentures, options, warrants, and futures contracts; and
 - 3. Mutual funds which hold liquid assets;
 - ~~(e)~~(c) "Marketable instrument" means an instrument that is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market;
 - ~~(f)~~(d) "Overall net gain" means the total net gain from all transactions incurred at each treasury function for the entire taxable period. "Overall net gain" does not mean the net gain from a specific transaction if multiple transactions occur during the taxable period;
 - ~~(g)~~(e) "Passenger airline" means a person or corporation engaged primarily in the carriage by aircraft of passengers in interstate commerce;
 - ~~(h)~~(f) ***"Qualified air freight forwarder" means a person that:***

1. *Is engaged primarily in the facilitation of the transportation of property by air;*
2. *Does not itself operate aircraft; and*
3. *Is in the same affiliated group as an affiliated airline;*

(i) "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241; and

~~(j)(e)~~ "Treasury function" means the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business and includes the following situations:

1. Providing liquidity for a corporation's business cycle; and
2. Providing a reserve for business contingencies or business acquisitions.

(2) If a corporation holds liquid assets in connection with one (1) or more treasury functions of the corporation, and the liquid assets produce business income when sold, exchanged, or otherwise disposed of, the overall net gain from those transactions for each treasury function for the tax period shall be included in the sales factor. For purposes of this subsection:

- (a) Each treasury function shall be considered separately; and
- (b) A corporation principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets is not performing a treasury function with respect to that income produced.

(3) For purposes of apportioning business income to this state:~~[-]~~

(a) Passenger airlines shall determine the property, payroll, and sales factors as follows:

1.~~(a)~~ Except as modified by this *subparagraph*~~[subsection]~~, the property factor shall be determined as provided in KRS 141.120(8)(a). Aircraft operated by a passenger airline shall be included in both the numerator and denominator of the property factor. Aircraft shall be included in the numerator of the property factor by determining the product of:

- a.~~1-1~~ The total average value of the aircraft operated by the passenger airline; and
- b.~~1-2~~ A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year;

2.~~(b)~~ Except as modified by this *subparagraph*~~[subsection]~~, the payroll factor shall be determined as provided in KRS 141.120(8)(b). Compensation paid during the tax period by a passenger airline to flight personnel shall be included in the numerator of the payroll factor by determining the product of:

- a.~~1-1~~ The total amount paid during the taxable year to flight personnel; and
- b.~~1-2~~ A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year; and

3.~~(c)~~ Except as modified by this *subparagraph*~~[subsection]~~, the sales factor shall be determined as provided in KRS 141.120(8)(c). Transportation revenues shall be included in the numerator of the sales factor by determining the product of:

- a.~~1-1~~ The total transportation revenues of the passenger airline for the taxable year; and
- b.~~1-2~~ A fraction, the numerator of which is the Kentucky revenue passenger miles for the taxable year and the denominator of which is the total revenue passenger miles for the taxable year.

(b) *Qualified air freight forwarders shall determine the property, payroll, and sales factors as follows:*

1. *The property factor shall be determined as provided in KRS 141.120(8)(a);*
2. *The payroll factor shall be determined as provided in KRS 141.120(8)(b); and*
3. *Except as modified by this subparagraph, the sales factor shall be determined as provided in KRS 141.120(8)(c). Freight forwarding revenues shall be included in the numerator of the sales factor by determining the product of:*

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- a. *The total freight forwarding revenues of the qualified air freight forwarder for the taxable year; and*
- b. *A fraction, the numerator of which is miles operated in Kentucky by the affiliated airline and the denominator of which is the total miles operated by the affiliated airline.*

→Section 3. Whereas Section 2 of this Act applies to taxable years beginning on or after January 1, 2010, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 11, 2012.