

## CHAPTER 137

## ( HB 170 )

AN ACT relating to fiscal matters.

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

➔Section 1. KRS 160.613 is amended to read as follows:

- (1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the district, of utility services, except that "gross receipts" shall not include:
  - (a) Amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production; ~~or~~ ~~and shall not include~~
  - (b) Amounts received for furnishing *utility services* ~~any of the above utilities~~ which are to be resold.
- (2) If any user of utility services purchases the utility services directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax, then the *user of the utility services* ~~consumer~~, if the tax has been levied in the *user's* ~~consumer's~~ district, shall be liable for the tax and shall pay directly to the department, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all utility services received by the tax rate levied under the provisions of this section.
- (3) *If a person engaged in manufacturing, processing, mining, or refining chooses to claim that the energy or energy-producing fuels purchased from a utility services provider exceeds an amount equal to three percent (3%) of the cost of production as provided in subsection (1)(a) of this section and receives confirmation of eligibility from the department, the person shall:*
  - (a) *Provide the utility services provider with a copy of the energy direct pay authorization issued by the department; and*
  - (b) *Report and pay directly to the department, in accordance with the provisions of KRS 160.615, the utility gross receipts license tax due.*

➔Section 2. KRS 160.6156 is amended to read as follows:

- (1) Any utility service provider *or any registered user of utility services as provided in subsections (2) or (3) of Section 1 of this Act* that has paid the utility gross receipts tax imposed by a school district pursuant to KRS 160.613 and 160.614 *to the department* may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.
- (2) A request for refund shall be in writing, and shall be made to the department with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.
- (3)
  - (a) Refunds shall be authorized by the department, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.
  - (b) Notwithstanding paragraph (a) of this subsection, a utility service provider shall not be entitled to a refund or credit of the taxes paid under KRS 160.613 or 160.614 if the utility service provider has increased its rates in accordance with KRS 160.617, unless the utility service provider refunds or credits its related customers the amount of overpayment made to the department.
- (4) The department shall make authorized tax refunds, including interest, from current tax collections in its possession allocated for distribution to the affected district. Applicable school district distributions and the department administrative expense allocation provided for pursuant to KRS 160.6154(2) shall be adjusted proportionately to reflect refunds paid. If sufficient funds are not available from the current distribution cycle, the department shall pay refunds from subsequent amounts collected for distribution to the affected district until all refund payments, including interest, have been completed.

- (5) If the department denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located *within thirty (30) days from the mailing date of the denial.*

➔Section 3. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each local government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may, except as provided in subsection (10) of this section, enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose a license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those local governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a local government upon an insurance company with respect to life insurance policies may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the local government.
- (3) Any license fee or tax imposed by a local government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the insurance company within each calendar quarter on risks located within the corporate limits of the local government on those classes of business which the insurance company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the local government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the local government.
- (4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the local government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.
- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the commissioner of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.
- (7)
  - (a) Upon written request of the legislative body of any local government, at the expense of the requesting local government, which shall be paid in advance by the local government to the Department of Insurance, the Department of Insurance shall audit, or cause to be audited by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the audit shall be reported to the local government and the insurance company subject to the audit. An insurance company may appeal the findings of the audit conducted under this subsection and any assessment issued pursuant to the audit findings in accordance with the provisions of KRS 91A.0804(5).
  - (b) Willful failure to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
  - (c) If the Department of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section, the Department of Insurance may assess the

responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government. The penalty fee shall be paid to the local government owed the license fee or tax less any administrative costs of the Department of Insurance in enforcing this section. Any insurance company or agent held responsible for a penalty fee may request a hearing with the Department of Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.

- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurance company shall furnish each local government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
- (a) Casualty;
  - (b) Automobile;
  - (c) Inland marine;
  - (d) Fire and allied perils;
  - (e) Health; and
  - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the local government is separate of penalties provided for in subsection (7) of this section. In addition, the local government may assess a ten percent (10%) penalty for a tax or fee not paid within thirty (30) days after the due date.
- (10) No license fee or tax imposed under this section shall apply to premiums~~[-received on-]~~:
- (a) ***Received on*** policies of group health insurance provided for state employees under KRS 18A.225;
  - (b) ***Received on*** policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under the provisions of KRS Chapter 342;
  - (c) ***Received on*** health insurance policies issued to individuals;
  - (d) ***Received on*** policies issued through Kentucky Access created in Subtitle 17B of KRS Chapter 304;
  - (e) ***Received on*** policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2);~~[-or-]~~
  - (f) ***Received on*** multistate surplus lines, defined as non-admitted insurance as provided in Title V, Subtitle B, the Non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203; ***or***
  - (g) ***Paid to insurance companies or surplus lines brokers by nonprofit self-insurance groups or self-insurance entities whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, unified local governments, school districts, or any other political subdivisions of the Commonwealth.***
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990. For purposes of this subsection, a consolidated local government, urban-county government, charter county government, or unified local government shall be considered a county.
- (13) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.
- (14) A county may impose a license fee or tax covering the entire county or may limit the application of the fee or tax to the unincorporated portions of the county.

**Signed by Governor April 25, 2014.**