

**CHAPTER 122****( HB 230 )**

AN ACT relating to the taxation of the commercial mining of cryptocurrency.

WHEREAS, the increased use of blockchain technology in a variety of applications and processes has led to significant innovation, developments, and modernization in multiple industries throughout the world; and

WHEREAS, access to cost-effective energy is critical to the development and growth of blockchain technology, particularly in the commercial mining of cryptocurrency which requires a substantial and constant supply of energy; and

WHEREAS, the General Assembly has actively encouraged the use and growth of blockchain technology in the Commonwealth as evidenced by 2019 House Resolution 171 authorizing a comprehensive study on the growing use of blockchain technology and its economic development potential for a variety of businesses and industries, as well as the passage of 2020 Senate Bill 55 which enacted KRS 42.747 and created a Blockchain Technology Working Group to study the use of blockchain in various sectors; and

WHEREAS, the Commonwealth has an opportunity to become a national leader in the emerging industry of the commercial mining of cryptocurrency given its abundant supply of electricity that can be provided at lower rates than most states, and its established infrastructure to provide such energy through the Tennessee Valley Authority and other electricity providers; and

WHEREAS, it is necessary to clarify the General Assembly's original intention that Kentucky's tax code must and does recognize that the continuing development of new and advanced manufacturing and industrial processing technologies has led to new industrial processes, such as blockchain used for commercial mining of cryptocurrency, which should and must be taxed in a manner similar to historical forms of manufacturing or industrial processing, in order to continue to encourage the location and expansion of such operations in the Commonwealth, rather than in other states likewise competing for such businesses;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Blockchain technology" means shared or distributed data structures or digital ledgers governed by consensus protocols and maintained by peer-to-peer networks that:*
  - 1. *Store digital transactions; and*
  - 2. *Verify and secure transactions cryptographically;*
- (b) *"Colocation facility" means a facility which houses tangible personal property that functions as a computing system node or nodes, or hosts such node or nodes, in the commercial mining of cryptocurrency and which the computing system node or nodes of the facility consume no less than two hundred thousand (200,000) kilowatt hours of electricity per month;*
- (c) *"Commercial mining of cryptocurrency" means the process through which blockchain technology is used to mine cryptocurrency at a colocation facility;*
- (d) *"Consensus protocol" means a set of rules and procedures that control how and when blockchain transactions are verified, validated, recorded, and recognized;*
- (e) *"Cryptocurrency" means a type of virtual currency that utilizes blockchain technology and that:*
  - 1. *Can be digitally traded between users; or*
  - 2. *Can be converted or exchanged for legal tender;*
- (f) *"Mine" means the process through which blockchain transactions are verified and accepted by adding the transactions to a blockchain ledger, which involves solving complex mathematical cryptographic problems associated with a block containing transaction data; and*

- (g) *"Peer-to-peer networks" has the same meaning as in KRS 42.747.*
- (2) (a) *The tax imposed by KRS 139.200 or 139.310 shall not apply to the sale or purchase of electricity that is used or consumed in the commercial mining of cryptocurrency.*
- (b) *Applications for the exemption shall be made on or after July 1, 2021, and on or before June 30, 2025.*
- (b) *The exemption shall apply to electricity sold or purchased on or after the effective date of application and before July 1, 2030.*
- (3) (a) *To qualify for the exemption provided in subsection (2) of this section, each person seeking the exemption shall file an application for each location when the commercial mining of cryptocurrency takes place in this state.*
- (b) *The application shall be in the form prescribed by the department and shall include:*
1. *The name and mailing address of the person seeking the exemption;*
  2. *A description of the person's business activities;*
  3. *The business location where the operations will be located, including the street address, city, and county; and*
  4. *Any other information the department may require.*
- (4) *If the application is approved by the department:*
- (a) *The department shall issue a certificate which shall be effective as of the date of the application. The effective date of the application shall be:*
1. *The postmark date, if a paper application is filed;*
  2. *The date received at the department's office, if an application is delivered in person; or*
  3. *The electronic time stamp, if the application is filed electronically; and*
- (b) *The approved applicant shall report the amounts of the tax exemption claimed in subsection (2) of this section from the date of application to September 1, 2021, on or before November 1, 2021, and for each fiscal year thereafter on or before each November 1, as long as the exemption applies.*
- (5) *On or before January 1, 2022, and on or before each January 1 thereafter as long as the exemption applies, the department shall report to the Interim Joint Committee on Appropriations and Revenue:*
- (a) *The total amount of tax exemption that has been claimed for the immediately preceding fiscal year; and*
- (b) *The total cumulative amount of the exemption claimed.*

➔Section 2. 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 *amounts received for furnishing*:
- (a) ~~{Amounts received for furnishing}~~Energy or energy-producing fuels to a person engaged in manufacturing or industrial processing *as provided in subsection (3) or (4) of this section*, if that person provides the utility services provider with a copy of its utility gross receipts license tax energy direct pay authorization, as provided in subsection (3) of this section, and the utility service provider retains a copy of the authorization in its records; ~~{or}~~
- (b) ~~{Amounts received for furnishing}~~Utility services which are to be resold; *or*
- (c) *Notwithstanding subsection (2) of this section, electricity used or consumed at a colocation facility in commercial mining of cryptocurrency:*
1. *If the facility operator provides the utility services provider with a copy of its utility gross receipts license tax exemption certificate, as authorized by subsection (6) of this section, and the utility service provider retains a copy of the exemption certificate in its records; or*

2. ***If the utility service provider is a governmental agency, the facility operator shall retain the exemption certificate in its records.***
- (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, if the tax has been levied in the user's school district, shall be liable for the tax and shall register with and 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) A person engaged in manufacturing or industrial processing whose cost of energy or energy-producing fuels used in the course of manufacturing or industrial processing exceeds an amount equal to three percent (3%) of the cost of production may apply to the department for a utility gross receipts license tax energy direct pay authorization. Cost of production shall be computed on the basis of a plant facility, which shall include all operations within the continuous, unbroken, integrated manufacturing or processing production process that ends with a product packaged and ready for sale. If the person receives confirmation of eligibility from the department, the person shall:
- Provide the utility services provider with a copy of the utility gross receipts license tax energy direct pay authorization issued by the department for all purchases of energy and energy-producing fuels; and
  - Report and pay directly to the department, in accordance with the provisions of KRS 160.615, the utility gross receipts license tax due.
- (4) A person who performs a manufacturing or industrial processing activity for a fee and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity is a toller. For periods on or after July 1, 2018, the costs of the tangible personal property shall be excluded from the toller's cost of production at a plant facility with tolling operations in place as of July 1, 2018.
- (5) For plant facilities that begin tolling operations after July 1, 2018, the costs of tangible personal property shall be excluded from the toller's cost of production if the toller:
- Maintains a binding contract for periods after July 1, 2018, that governs the terms, conditions, and responsibilities with a separate legal entity, which holds title to the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity;
  - Maintains accounting records that show the expenses it incurs to fulfill the binding contract that include but are not limited to energy or energy-producing fuels, materials, labor, procurement, depreciation, maintenance, taxes, administration, and office expenses;
  - Maintains separate payroll, bank accounts, tax returns, and other records that demonstrate its independent operations in the performance of its tolling responsibilities;
  - Demonstrates one (1) or more substantial business purposes for the tolling operations germane to the overall manufacturing, industrial processing activities, or corporate structure at the plant facility. A business purpose is a purpose other than the reduction of utility gross receipts license tax liability for the purchases of energy and energy-producing fuels; and
  - Provides information to the department upon request that documents fulfillment of the requirements in paragraphs (a) to (d) of this subsection and gives an overview of its tolling operations with an explanation of how the tolling operations relate and connect with all other manufacturing or industrial processing activities occurring at the plant facility.
- (6) (a) ***The operator of a colocation facility primarily engaged in the commercial mining of cryptocurrency may apply to the department for a utility gross receipts license tax exemption certificate. If the operator receives confirmation of eligibility from the department, it:***
- Shall provide the utility services provider with a copy of the utility gross receipts license tax exemption certificate issued by the department for all purchases of electricity; or***
  - Keep the certificate on file if the utility service provider is a governmental agency.***
- (b) ***The utility gross receipts license tax exemption shall be effective from the date of confirmation of eligibility until June 30, 2030.***

➔Section 3. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.
  - (a) "Communications service" includes but is not limited to:
    1. Local and long-distance telephone services;
    2. Telegraph and teletypewriter services;
    3. Postpaid calling services;
    4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
    5. Channel services involving a path of communications between two (2) or more points;
    6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
    7. Caller ID services, ring tones, voice mail, and other electronic messaging services;
    8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and
    9. Voice over Internet Protocol (VOIP).
  - (b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:
    1. Information services;
    2. Internet access as defined in 47 U.S.C. sec. 151;
    3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;
    4. The sale of directory and other advertising and listing services;
    5. Billing and collection services provided to another communications service provider;
    6. Cable service, satellite broadcast, satellite master antenna television, wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996, and Internet protocol television provided through wireline facilities without regard to delivery technology;
    7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:
      - a. Carrier access charges, excluding user access fees;
      - b. Right of access charges;
      - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
      - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
      - e. Charges for use of facilities for providing or receiving communications service;
    8. The sale of communications services provided to the public by means of a pay phone;

9. Prepaid calling services and prepaid wireless calling service;
  10. Interstate telephone service, if the interstate charge is separately itemized for each call; and
  11. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;
- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;
  - (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services;
  - (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas;
  - (6) "Cable service" has the same meaning as in KRS 136.602;
  - (7) "Satellite broadcast and wireless cable service" has the same meaning as in KRS 136.602;
  - (8) "Ring tones" has the same meaning as in KRS 136.602;
  - (9) "Multichannel video programming service" has the same meaning as in KRS 136.602;
  - (10) "Industrial processing" has the same meaning as in KRS 139.010;
  - (11) "Manufacturing" has the same meaning as in KRS 139.010;~~and~~
  - (12) "Plant facility" has the same meaning as in KRS 139.010;
  - (13) "Commercial mining of cryptocurrency" has the same meaning as in Section 1 of this Act; and**
  - (14) "Colocation facility" has the same meaning as in Section 1 of this Act.**

➔Section 4. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (2) The prohibition established by subsection (1) of this section shall not extend to:
  - (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  - (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
  - (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in

this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);

- (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
  - (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
  - (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
  - (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or
  - (k) Providing information to the Legislative Research Commission under:
    - 1. *Section 1 of this Act for the purposes of the sales and use tax exemption on the commercial mining of cryptocurrency;***
    - ~~2.1-1~~ KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
    - ~~3.2-2~~ KRS 141.436 for purposes of the energy efficiency products credits;
    - ~~4.3-3~~ KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
    - ~~5.4-4~~ KRS 148.544 for purposes of the film industry incentives;
    - ~~6.5-5~~ KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
    - ~~7.6-6~~ KRS 141.068 for purposes of the Kentucky investment fund;
    - ~~8.7-7~~ KRS 141.396 for purposes of the angel investor tax credit;
    - ~~9.8-8~~ KRS 141.389 for purposes of the distilled spirits credit;
    - ~~10.9-9~~ KRS 141.408 for purposes of the inventory credit;
    - ~~11.10-10~~ KRS 141.390 for purposes of the recycling and composting credit;
    - ~~12.11-11~~ KRS 141.3841 for purposes of the selling farmer tax credit; and
    - ~~13.12-12~~ KRS 141.4231 for purposes of the renewable chemical production tax credit.
- (3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
  - (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
  - (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
  - (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔ Section 5. This Act takes effect July 1, 2021.

**Signed by Governor March 25, 2021.**