

**134.580 Refund of taxes, other than ad valorem and unconstitutional taxes -- Immunity of the Commonwealth from refund suits based on combined or consolidated returns.**

- (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; and
  - (b) "Overpayment" or "payment where no tax was due" means the excess of the tax payments made over the correct tax liability determined 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 49.220 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 Claims Commission 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 49.220 and 131.110.
- (4) Notwithstanding any provision of this section, when an assessment of limited liability entity tax is made under KRS 141.0401 against a pass-through entity as defined in KRS 141.206, the corporation or individual partners, members, or shareholders of the pass-through entity shall have the greater of the time period provided by this section or one hundred eighty (180) days from the date the assessment becomes final to file amended returns requesting any refund of tax for the taxable year of the assessment and to allow for items of income, deduction, and credit to be properly reported on the returns of the partners, members, or shareholders of the pass-through entity subject to adjustment.
- (5) 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.
- (6) 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.

- (7) This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (8) 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.
- (9) 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.
- (10) Notwithstanding any provision of the Kentucky Revised Statutes 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; and
  - (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.
- (11) Notwithstanding any provision of the Kentucky Revised Statutes 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; and
  - (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.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 196, sec. 2, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 74, sec. 76, effective June 29, 2017. -- Repealed and reenacted 2009 Ky. Acts ch. 86, sec. 10, effective March 24, 2009. -- Amended 2008 Ky. Acts ch. 132, sec. 11, effective April 24, 2008. -- Amended 2007 Ky. Acts ch. 22, sec. 1, effective March 19, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 280, effective June 20, 2005; ch. 112, sec. 1, effective June 20, 2005; and ch. 134, sec. 1, effective June 20, 2005. -- Amended 1996 Ky. Acts ch. 344, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 177, sec. 1, effective July 13, 1990; and ch. 423, sec. 7, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 452, sec. 9, effective July 1, 1982. -- Amended 1976 Ky. Acts ch. 155, sec. 1. -- Amended 1970 Ky. Acts ch. 216, sec. 2. -- Amended 1966 Ky. Acts ch. 187, Part I, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4114h-7.

**Legislative Research Commission Note (6/27/2019).** This statute was amended in 2019 Ky. Acts ch. 151, sec. 12 (HB 354) and ch. 196, sec. 2 (HB 458). Although HB 354 was enacted, 2019 Ky. Acts ch. 196, sec. 16 (HB 458) repealed certain sections of that prior Act, including Section 12, and directed the Reviser of Statutes to not codify them. Therefore, the amendment to this statute in 2019 Ky. Acts ch. 151, sec. 12, was not codified.

**Legislative Research Commission Note (3/24/2009).** 2009 Ky. Acts ch. 86, sec. 15, provides that "the provisions of Sections 7 to 10 of this Act shall apply retroactively to all outstanding refund claims for taxable years ending prior to the effective date of this Act and shall apply to all claims for those taxable years pending in any judicial or administrative forum."

**Legislative Research Commission Note (3/24/2009).** 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

**Legislative Research Commission Note (3/24/2009).** 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding."

**Legislative Research Commission Note (4/24/2008).** 2008 Ky. Acts ch. 132, sec. 15 provides that the amendments made to this statute by that Act "shall apply retroactively to all outstanding refund claims for taxable years ending prior to the effective date of this Act (April 24, 2008) and shall apply to all claims for those taxable years pending in any judicial or administrative forum."

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**Legislative Research Commission Note (9/6/90).** This note replaces an earlier note

dated 7/13/90. This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.