

141.121 Special rules for apportioning business income -- Management of a treasury function -- Passenger airlines -- Qualified air freight forwarders -- Administrative regulations regarding sourcing of receipts.

- (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 141.201;
 - (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) "Passenger airline" means a person or corporation engaged primarily in the carriage by aircraft of passengers in interstate commerce;
 - (e) "Provider" means any corporation engaged in the business of providing:
 1. Communications service as defined in KRS 136.602;
 2. Cable service as defined in KRS 136.602; or
 3. Internet access as defined in 47 U.S.C. sec. 151;
 - (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; and
 - (g) "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241.
- (2) (a) For purposes of apportioning business income to this state for taxable years beginning prior to January 1, 2018:
 1. Passenger airlines shall determine the property, payroll, and sales factors as follows:
 - a. Except as modified by this subdivision, the property factor shall be determined as provided in KRS 141.901. 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:
 - i. The total average value of the aircraft operated by the passenger airline; and
 - ii. 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;

- b. Except as modified by this subdivision, the payroll factor shall be determined as provided in KRS 141.901. 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:
 - i. The total amount paid during the taxable year to flight personnel; and
 - ii. 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
 - c. Except as modified by this subdivision, the sales factor shall be determined as provided in KRS 141.901. Transportation revenues shall be included in the numerator of the sales factor by determining the product of:
 - i. The total transportation revenues of the passenger airline for the taxable year; and
 - ii. 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; and
2. Qualified air freight forwarders shall determine the property, payroll, and sales factors as follows:
 - a. The property factor shall be determined as provided in KRS 141.901;
 - b. The payroll factor shall be determined as provided in KRS 141.901; and
 - c. Except as modified by this subparagraph, the sales factor shall be determined as provided in KRS 141.901. Freight forwarding revenues shall be included in the numerator of the sales factor by determining the product of:
 - i. The total freight forwarding revenues of the qualified air freight forwarder for the taxable year; and
 - ii. 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.
- (b) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, except as modified by this paragraph, the apportionment fraction shall be determined as provided in KRS 141.120, except that:
 1. Transportation revenues shall be determined to be in this state by multiplying the total transportation revenues by 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; and

2. Freight forwarding revenues shall be determined to be in this state by multiplying the total freight forwarding revenues by 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.
- (3) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, the apportionment fraction for a provider shall continue to be calculated using a three (3) factor formula as provided in KRS 141.901.
 - (4)
 - (a) A corporation may elect the allocation and apportionment methods for the corporation's apportionable income provided for in paragraphs (b) and (c) of this subsection. The election, if made, shall be irrevocable for a period of five (5) years.
 - (b) All business income derived directly or indirectly from the sale of management, distribution, or administration services to or on behalf of regulated investment companies, as defined under the Internal Revenue Code of 1986, as amended, including trustees, and sponsors or participants of employee benefit plans which have accounts in a regulated investment company, shall be apportioned to this state only to the extent that shareholders of the investment company are domiciled in this state as follows:
 1. Total apportionable income shall be multiplied by a fraction, the numerator of which shall be Kentucky receipts from the services for the tax period and the denominator of which shall be the total receipts everywhere from the services for the tax period;
 2. For purposes of subparagraph 1. of this paragraph, Kentucky receipts shall be determined by multiplying total receipts for the taxable year from each separate investment company for which the services are performed by a fraction. The numerator of the fraction shall be the average of the number of shares owned by the investment company's shareholders domiciled in this state at the beginning of and at the end of the investment company's taxable year, and the denominator of the fraction shall be the average of the number of the shares owned by the investment company shareholders everywhere at the beginning of and at the end of the investment company's taxable year; and
 3. Nonapportionable income shall be allocated to this state as provided in KRS 141.120.
 - (c) All apportionable income derived directly or indirectly from the sale of securities brokerage services by a business which operates within the boundaries of any area of the Commonwealth, which on June 30, 1992, was designated as a Kentucky Enterprise Zone, as described in KRS 154.655(2) before that statute was renumbered in 1992, shall be apportioned to this state only to the extent that customers of the securities brokerage firm are domiciled in this state. The portion of business income apportioned to

Kentucky shall be determined by multiplying the total business income from the sale of these services by a fraction determined in the following manner:

1. The numerator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by customers domiciled in Kentucky for the brokerage firm's taxable year;
 2. The denominator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by all of the brokerage firm's customers for that year; and
 3. Nonapportionable income shall be allocated to this state as provided in KRS 141.120.
- (5) Public service companies and financial organizations required by KRS 141.010 to allocate and apportion net income shall allocate and apportion that income as follows:
- (a) Nonapportionable income shall be allocated to this state as provided in KRS 141.120;
 - (b) Apportionable income shall be apportioned to this state as provided by KRS 141.120. Receipts shall be determined as provided by administrative regulations promulgated by the department; and
 - (c) An affiliated group required to file a consolidated return under KRS 141.201 that includes a public service company, a provider of communications services or multichannel video programming services as defined in KRS 136.602, or a financial organization shall determine the amount of receipts as provided by administrative regulations promulgated by the department.
- (6) A corporation:
- (a) That owns an interest in a limited liability pass-through entity; or
 - (b) That owns an interest in a general partnership;
- shall include the proportionate share of receipts of the limited liability pass-through entity or general partnership when apportioning income. The phrases "an interest in a limited liability pass-through entity" and "an interest in a general partnership" shall extend to each level of multiple-tiered pass-through entities.
- (7) The department shall promulgate administrative regulations to detail the sourcing of the following receipts related to financial institutions:
- (a) Receipts from the lease of real property;
 - (b) Receipts from the lease of tangible personal property;
 - (c) Interest, fees, and penalties imposed in connection with loans secured by real property;
 - (d) Interest, fees, and penalties imposed in connection with loans not secured by real property;
 - (e) Net gains from the sale of loans;
 - (f) Receipts from fees, interest, and penalties charged to card holders;
 - (g) Net gains from the sale of credit card receivables;

- (h) Card issuer's reimbursement fees;
- (i) Receipts from merchant discount;
- (j) Receipts from ATM fees;
- (k) Receipts from loan servicing fees;
- (l) Receipts from other services;
- (m) Receipts from the financial institution's investment assets and activity and trading assets and activity; and
- (n) All other receipts.

Effective: April 15, 2020

History: Amended 2020 Ky. Acts ch. 91, sec. 10, effective April 15, 2020. -- Amended 2019 Ky. Acts ch. 151, sec. 44, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 78, effective April 14, 2018; and ch. 207, sec. 78, effective April 27, 2018. -- Amended 2012 Ky. Acts ch. 101, sec. 2, effective April 11, 2012. -- Created 2008 Ky. Acts ch. 18, sec. 3, effective July 15, 2008.

Legislative Research Commission Note (4/15/2020). 2020 Ky. Acts ch. 91, sec. 76 provides that the changes made to this statute in Section 10 of that Act apply to taxable years beginning on or after January 1, 2019.

Legislative Research Commission Note (4/27/2018). Pursuant to 2018 Ky. Acts ch. 207, sec. 153, the amendments made to this statute in that Act apply to taxable years beginning on or after January 1, 2018.

Legislative Research Commission Note (4/11/2012). 2012 Ky. Acts ch. 101, sec. 3, provides that this statute, as amended by 2012 Ky. Acts ch. 101, sec. 2, "applies to taxable years beginning on or after January 1, 2010."

Legislative Research Commission Note (7/15/2008). 2008 Ky. Acts ch. 18, sec. 4 provides that this section "shall apply to taxable periods beginning after December 31, 2007."