

141.209 Annual election to have tax under KRS 141.120 imposed on pass-through entity -- Refundable tax credit -- Report to owner -- Administrative regulations.

- (1) For purposes of this section:
 - (a) "Authorized person" means any individual with the authority from the electing entity to bind the electing entity or sign returns on its behalf;
 - (b) "Direct owner" means a partner, member, or shareholder that holds an interest directly in a pass-through entity;
 - (c) "Electing entity" means a pass-through entity that makes an election under this section;
 - (d) "Entity owner" means the direct or indirect owners of an electing entity receiving a proportionate share of the entity's income;
 - (e) "Indirect owner" means a partner, member, or shareholder in a pass-through entity that holds an interest indirectly, or through another indirect partner, member, or shareholder in a pass-through entity; and
 - (f) "Owner" means a direct or indirect partner, member, or shareholder of an electing entity and includes a beneficiary of an estate or trust.
- (2)
 - (a) For taxable years beginning on or after January 1, 2022, an authorized person may elect annually, on behalf of the electing entity, to have the tax under KRS 141.020 imposed upon the electing entity and based upon the ordinary income and the separately stated items of income calculated under KRS 141.206.
 - (b)
 1. All calculations for the return shall continue to be made as provided under KRS 141.206.
 2. The election shall be made on a form prescribed by the department.
 - (c) For taxable years beginning on or after January 1, 2023, the election may be made at any time during the taxable year or after the end of the taxable year, but not later than the:
 1. Fifteenth day of the fourth month after the close of the taxable year; or
 2. Fifteenth day of the tenth month after the close of the taxable year, if the return is filed under KRS 141.170.
 - (d) For taxable years beginning on or after January 1, 2022, but before January 1, 2023:
 1. The election may be made after March 31, 2023, but shall be made before August 31, 2024;
 2. As a result of the electing entity making the election as described in subparagraph 1. of this paragraph:
 - a. No late payment, late filing, or other similar penalty under KRS 131.180 shall be imposed on an electing entity; and
 - b. No interest under KRS 131.183 shall apply to the tax paid by the electing entity.
 - (e)
 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2024, an electing entity is not required to make estimated

income tax payments and no estimated tax penalty shall be assessed under KRS 141.985.

2. For taxable years beginning on or after January 1, 2024, an electing entity shall be:
 - a. Required to make estimated income tax payments if the provisions of KRS 141.305 are met; and
 - b. Subject to the estimated tax penalty under KRS 141.985 if the estimated income tax payments are not properly made.
- (f) The election, once made for a taxable year, is irrevocable and binding upon all entity owners.
- (3) For taxable years beginning on or after January 1, 2022, there shall be allowed a refundable pass-through entity tax credit which shall be:
 - (a) Equal to one hundred percent (100%) of the entity owner's proportionate share of the tax paid by the pass-through entity for the taxable year;
 - (b) Claimed against the tax imposed under KRS 141.020 on a return filed by the entity owner, with the ordering of credits as provided in KRS 141.0205; and
 - (c) Based on the pro rata share of the entity owner's income from the pass-through entity.
- (4) An electing entity shall report to each direct owner of the entity the direct owner's proportionate share of the tax paid for the taxable year for purposes of the pass-through entity tax credit created in subsection (3) of this section.
- (5) The department shall prescribe forms and may promulgate administrative regulations as needed to administer this section.

Effective: March 31, 2023

History: Created 2023 Ky. Acts ch. 148, sec. 9, effective March 31, 2023.

Legislative Research Commission Note (3/31/2023). 2023 Ky. Acts ch. 148, sec. 9, which created this statute, contained an erroneous reference in subsection (3)(b) to "the ordering of credits as provided in Section 9 of this Act," although Section 6 (KRS 141.0205) is the only section in that Act that sets forth the ordering of tax credits. The Reviser of Statutes has corrected this manifest clerical or typographical error during codification under the authority of KRS 7.136(1).