

1 AN ACT relating to nonprofit exemptions in taxation and declaring an emergency.

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

3 ➔Section 1. KRS 139.495 is amended to read as follows:

4 (1) The taxes imposed by this chapter shall apply to:

5 (a) Resident, nonprofit educational, charitable, or religious institutions which
6 have qualified for exemption from income taxation under Section 501(c)(3) of
7 the Internal Revenue Code; and

8 (b) Any resident, single member limited liability company that is:

9 1. Wholly owned and controlled by a resident or nonresident, nonprofit
10 educational, charitable, or religious institution which has qualified for
11 exemption from income taxation under Section 501(c)(3) of the Internal
12 Revenue Code; and

13 2. Disregarded as an entity separate from the resident or nonresident,
14 nonprofit educational, charitable, or religious institution for federal
15 income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;

16 as provided in this section.

17 (2) Tax does not apply to sales of tangible personal property, digital property, or
18 services to these institutions or limited liability companies described in subsection
19 (1) of this section, provided the tangible personal property, digital property, or
20 service is to be used solely in this state within the educational, charitable, or
21 religious function.

22 (3) Tax does not apply to sales of food to students in school cafeterias or lunchrooms.

23 (4) Tax does not apply to sales by school bookstores of textbooks, workbooks, and
24 other course materials.

25 (5) Tax does not apply to sales by nonprofit, school sponsored clubs and organizations,
26 provided such sales do not include tickets for athletic events.

27 (6) ***Tax does not apply to the sale of admissions by nonprofit educational, charitable,***

1 or religious institutions.

2 (7) An institution shall be entitled to a refund equal to twenty-five percent (25%) of the
3 tax collected on its sale of donated goods if the refund is used exclusively as
4 reimbursement for capital construction costs of additional retail locations in this
5 state, provided the institution:

- 6 (a) Routinely sells donated items;
- 7 (b) Provides job training and employment to individuals with workplace
8 disadvantages and disabilities;
- 9 (c) Spends at least seventy-five percent (75%) of its annual revenue on job
10 training, job placement, or other related community services;
- 11 (d) Submits a refund application to the department within sixty (60) days after the
12 new retail location opens for business; and
- 13 (e) Provides records of capital construction costs for the new retail location and
14 any other information the department deems necessary to process the refund.

15 The maximum refund allowed for any location shall not exceed one million dollars
16 (\$1,000,000). As used in this subsection, "capital construction cost" means the cost
17 of construction of any new facilities or the purchase and renovation of any existing
18 facilities, but does not include the cost of real property other than real property
19 designated as a brownfield site as defined in KRS 65.680(4).

20 ~~(8)(7)~~ Notwithstanding any other provision of law to the contrary, refunds under
21 subsection ~~(7)(6)~~ of this section shall be made directly to the institution. Interest
22 shall not be allowed or paid on the refund. The department may examine any refund
23 within four (4) years from the date the refund application is received. Any
24 overpayment shall be subject to the interest provisions of KRS 131.183 and the
25 penalty provisions of KRS 131.180.

26 ~~(9)(8)~~ All other sales made by nonprofit educational, charitable, or religious
27 institutions or limited liability companies described in subsection (1) of this section

1 are taxable and the tax may be passed on to the customer as provided in KRS
2 139.210.

3 →Section 2. KRS 139.200 is amended to read as follows:

4 A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross
5 receipts derived from:

6 (1) Retail sales of:

7 (a) Tangible personal property, regardless of the method of delivery, made within
8 this Commonwealth; and

9 (b) Digital property regardless of whether:

- 10 1. The purchaser has the right to permanently use the property;
- 11 2. The purchaser's right to access or retain the property is not permanent; or
- 12 3. The purchaser's right of use is conditioned upon continued payment; and

13 (2) The furnishing of the following:

14 (a) The rental of any room or rooms, lodgings, campsites, or accommodations
15 furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds,
16 recreational vehicle parks, or any other place in which rooms, lodgings,
17 campsites, or accommodations are regularly furnished to transients for a
18 consideration. The tax shall not apply to rooms, lodgings, campsites, or
19 accommodations supplied for a continuous period of thirty (30) days or more
20 to a person;

21 (b) Sewer services;

22 (c) The sale of admissions, except:

- 23 1. Admissions to racetracks taxed under KRS 138.480;
- 24 2. Admissions to historical sites exempt under KRS 139.482;~~and~~
- 25 3. A portion of the admissions to county fairs exempt under KRS 139.470;

26 and

27 4. Admissions charged by nonprofit educational, charitable, or religious

1 *institutions exempt under Section 1 of this Act;*

- 2 (d) Prepaid calling service and prepaid wireless calling service;
- 3 (e) Intrastate, interstate, and international communications services as defined in
- 4 KRS 139.195, except the furnishing of pay telephone service as defined in
- 5 KRS 139.195;
- 6 (f) Distribution, transmission, or transportation services for natural gas that is for
- 7 storage, use, or other consumption in this state, excluding those services
- 8 furnished:
- 9 1. For natural gas that is classified as residential use as provided in KRS
- 10 139.470(7); or
- 11 2. To a seller or reseller of natural gas;
- 12 (g) Landscaping services, including but not limited to:
- 13 1. Lawn care and maintenance services;
- 14 2. Tree trimming, pruning, or removal services;
- 15 3. Landscape design and installation services;
- 16 4. Landscape care and maintenance services; and
- 17 5. Snow plowing or removal services;
- 18 (h) Janitorial services, including but not limited to residential and commercial
- 19 cleaning services, and carpet, upholstery, and window cleaning services;
- 20 (i) Small animal veterinary services, excluding veterinary services for equine,
- 21 cattle, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and cervids;
- 22 (j) Pet care services, including but not limited to grooming and boarding services,
- 23 pet sitting services, and pet obedience training services;
- 24 (k) Industrial laundry services, including but not limited to industrial uniform
- 25 supply services, protective apparel supply services, and industrial mat and rug
- 26 supply services;
- 27 (l) Non-coin-operated laundry and dry cleaning services;

- 1 (m) Linen supply services, including but not limited to table and bed linen supply
2 services and nonindustrial uniform supply services;
- 3 (n) Indoor skin tanning services, including but not limited to tanning booth or
4 tanning bed services and spray tanning services;
- 5 (o) Non-medical diet and weight reducing services;
- 6 (p) Limousine services, if a driver is provided; and
- 7 (q) Extended warranty services.

8 ➔Section 3. KRS 132.195 is amended to read as follows:

- 9 (1) When any real or personal property which is exempt from taxation is leased or
10 possession is otherwise transferred to a natural person, association, partnership, or
11 corporation in connection with a business conducted for profit, the leasehold or
12 other interest in the property shall be subject to state and local taxation at the rate
13 applicable to real or personal property levied by each taxing jurisdiction.
- 14 (2) Subsection (1) of this section shall not apply to interests in:
- 15 (a) Industrial buildings, as defined under KRS 103.200, owned and financed by a
16 tax-exempt governmental unit or tax-exempt statutory authority under the
17 provisions of KRS Chapter 103, the taxation of which is provided for under
18 the provisions of KRS 132.020 and 132.200;
- 19 (b) Federal property for which payments are made in lieu of taxes in amounts
20 equivalent to taxes which might otherwise be lawfully assessed;
- 21 (c) Property of any state-supported educational institution;
- 22 (d) Vending stand locations and facilities operated by blind persons under the
23 auspices of the Office for the Blind, regardless of whether the property is
24 owned by the federal, state, or a local government;
- 25 (e) Property of any free public library;~~{ or }~~
- 26 (f) Property in Fayette County, Kentucky, administered by the Department of
27 Military Affairs, Bluegrass Station Division; **or**

1 *(g) Property of a purely public charity, if the property and the income derived*
2 *from that property are used to further the purely public charity's mission.*

3 (3) Taxes shall be assessed to lessees of exempt real or personal property and collected
4 in the same manner as taxes assessed to owners of other real or personal property,
5 except that taxes due under this section shall not become a lien against the property.
6 When due, such taxes shall constitute a debt due from the lessee to the state, county,
7 school district, special district, or urban-county government for which the taxes
8 were assessed and if unpaid shall be recoverable by the state as provided in KRS
9 Chapter 134.

10 ➔Section 4. The provisions of subsection (2)(g) of Section 3 of this Act shall
11 apply retroactively to all outstanding refund claims for taxable years ending prior to the
12 effective date of this Act and shall apply to all claims for those taxable years pending in
13 any judicial or administrative forum.

14 ➔Section 5. Whereas reducing the tax impact on nonprofit organizations is
15 essential for charitable missions within Kentucky, an emergency is declared to exist, and
16 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
17 becoming a law.