

1 AN ACT relating to depreciation.

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

3 ➔Section 1. KRS 141.0101 is amended to read as follows:

- 4 (1) (a) The provisions of subsections (2) to (11) of this section shall apply to taxable
5 years beginning before January 1, 1994.
- 6 (b) The provisions of subsections (12) to (15) of this section shall apply to taxable
7 years beginning after December 31, 1993.
- 8 (c) The provisions of subsection (16) of this section apply to property placed in
9 service after September 10, 2001.
- 10 (2) For property placed in service prior to January 1, 1990, in lieu of the depreciation
11 and expense deductions allowed under Internal Revenue Code Sections 168 and
12 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and
13 tear, and obsolescence of property used in a trade or business shall be allowed and
14 computed as set out in subsections (3) to (11) of this section. For property placed in
15 service after December 31, 1989, the depreciation and expense deductions allowed
16 under Sections 168 and 179 of the Internal Revenue Code shall be allowed.
- 17 (3) Effective August 1, 1985, "reasonable allowance" as used in subsection (2) of this
18 section shall mean depreciation computed in accordance with Section 167 of the
19 Internal Revenue Code and related regulations in effect on December 31, 1980, for
20 all property placed in service on or after January 1, 1981, except as provided in
21 subsections (6) to (8) of this section.
- 22 (4) Depreciation of property placed in service prior to January 1, 1981, shall be
23 computed under Section 167 of the Internal Revenue Code, and the method elected
24 thereunder at the time the property was first placed in service or as changed with
25 the approval of the Commissioner of Internal Revenue Service or as required by
26 changes in federal regulations.
- 27 (5) Taxpayers other than corporations shall be allowed to deduct as depreciation on

1 recovery property placed in service before August 1, 1985, an amount calculated
2 under Section 168 of the Internal Revenue Code subject to the provisions of
3 subsections (6) and (8) of this section. Corporations with a taxable year beginning
4 on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for
5 depreciation on recovery property placed in service prior to August 1, 1985, using
6 either of the following alternative methods:

7 (a) Dividing the total of the deductions allowed under Internal Revenue Code
8 Section 168 by one and four tenths (1.4); and

9 (b) Calculating the deduction that would be allowed or allowable under the
10 provisions of Section 167 of the Internal Revenue Code.

11 (6) Recovery property placed in service on or after January 1, 1981, and before August
12 1, 1985, and subject to transition under subsection (8) of this section, shall be
13 subject to depreciation under Section 167 of the Internal Revenue Code, restricted
14 to the straight line method therein provided over the remaining useful life of such
15 assets.

16 (7) Depreciation of property placed in service on or after August 1, 1985, shall be
17 computed under Section 167 of the Internal Revenue Code.

18 (8) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost
19 Recovery System (ACRS) depreciation, to the depreciation allowed or allowable
20 under this section shall be reported in the first taxable year beginning on or after
21 August 1, 1985. To implement the transition, the following adjustments shall be
22 made:

23 (a) Taxpayers other than corporations shall use the adjusted Kentucky basis for
24 property placed in service on or after January 1, 1981. "Adjusted Kentucky
25 basis" means the basis used for determining depreciation under Section 168 of
26 the Internal Revenue Code less the allowed or allowable depreciation and
27 adjustment for election to expense an asset (Section 179 of the Internal

1 Revenue Code);and

2 (b) Corporations shall adjust the federal unadjusted basis by increasing such basis
3 by the ACRS depreciation not allowed as a deduction in determining
4 Kentucky net income for tax years beginning after June 30, 1984, less allowed
5 or allowable ACRS depreciation for federal income tax purposes.
6 Corporations will not be permitted to adjust the basis by the ACRS
7 depreciation not allowed for Kentucky income tax purposes in tax years
8 beginning on or before June 30, 1984.

9 (9) A taxpayer may elect to treat the cost of property placed in service on or before July
10 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in
11 effect on December 31, 1981, except that the aggregate cost which may be
12 expensed for corporations shall not exceed five thousand dollars (\$5,000). A
13 taxpayer may elect to treat the cost of property placed in service on or after August
14 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in
15 effect on December 31, 1980. Computations, limitations, definitions, exceptions,
16 and other provisions of Section 179 of the Internal Revenue Code and related
17 regulations shall be construed to govern the computation of the allowable
18 deduction.

19 (10) Upon the sale, exchange, or disposition of any depreciable property placed in
20 service on or after January 1, 1981, capital gains or losses and the amount of
21 ordinary income determined under the provisions of the Internal Revenue Code
22 shall be computed for Kentucky income tax purposes as follows:

23 (a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced
24 by any basis adjustment made by the taxpayer under Section 48(q)(1) of the
25 Internal Revenue Code and any expense allowed and utilized under Section
26 179 of the Internal Revenue Code (First Year Expense) in determining
27 Kentucky net income in prior years;~~[-and]~~

- 1 (b) Compute the adjusted basis by subtracting the depreciation allowed or
2 allowable for Kentucky income tax purposes from the unadjusted basis,
3 except corporations will not be permitted to adjust the basis of assets by the
4 ACRS depreciation not allowed for Kentucky income tax purposes in the tax
5 years beginning on or before June 30, 1984; ~~and~~
- 6 (c) Compute the gain or loss by subtracting the adjusted basis from the value
7 received from the disposition of the depreciable property; ~~and~~
- 8 (d) Compute the recapture of depreciation required under Sections 1245 through
9 1256 of the Internal Revenue Code and related regulations; ~~and~~
- 10 (e) Unless otherwise provided in this subsection, the provisions of the Internal
11 Revenue Code and related regulations governing the determination of capital
12 gains or losses shall apply for Kentucky income tax purposes.
- 13 (11) Unless otherwise provided by this chapter, the basis of property placed in service
14 prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis,
15 adjusted or unadjusted, required to be used under Section 167 of the Internal
16 Revenue Code in effect on December 31, 1980.
- 17 (12) As used in this subsection to subsection (14) of this section:
- 18 (a) "Transition property" means any property placed in service before the first
19 day of the first taxable year beginning after December 31, 1993, and owned
20 by the taxpayer on the first day of the first taxable year beginning after
21 December 31, 1993; ~~and~~
- 22 (b) "Adjusted Kentucky basis" means the amount computed in accordance with
23 the provisions of paragraph (b) of subsection (10) of this section for transition
24 property; ~~and~~
- 25 (c) "Adjusted federal basis" means the original cost, or, in the case of Section 338
26 property, the adjusted grossed-up basis of transition property less:
- 27 1. Any basis adjustments required by the Internal Revenue Code for

- 1 credits; and
- 2 2. The total accumulated depreciation and election to expense deductions
3 allowed or allowable for federal income tax purposes;~~[-]~~
- 4 (d) "Section 338 property" means property to which an adjusted grossed-up basis
5 has been allocated pursuant to a valid election made by a purchasing
6 corporation under the provisions of Section 338 of the Internal Revenue
7 Code; and~~[-]~~
- 8 (e) "Transition amount" means the net difference between the adjusted Kentucky
9 basis and the adjusted federal basis of all transition property determined as of
10 the first day of the first taxable year beginning after December 31, 1993.
- 11 (13) For taxable years beginning after December 31, 1993, the amounts of depreciation
12 and election to expense deductions, allowed or allowable, the basis of assets,
13 adjusted or unadjusted, and the gain or loss from the sale or other disposition of
14 assets shall be the same for Kentucky income tax purposes as determined under
15 Chapter 1 of the Internal Revenue Code.
- 16 (14) For taxable years beginning after December 31, 1993, the transition amount
17 computed in accordance with the provisions of paragraph (e) of subsection (12) of
18 this section shall be reported by the taxpayer as follows:
- 19 (a) In the first taxable year beginning after December 31, 1993, and the eleven
20 (11) succeeding taxable years, the taxpayer shall include in gross income one-
21 twelfth (1/12) of the transition amount if:
- 22 1. The adjusted federal basis of transition property exceeds the adjusted
23 Kentucky basis of transition property;
- 24 2. The transition amount exceeds five million dollars (\$5,000,000);
- 25 3. The transition amount includes property for which an election was made
26 under Section 338 of the Internal Revenue Code; and
- 27 4. The taxpayer elects the provisions of this paragraph with the filing of an

1 amended income tax return for the first taxable year beginning after
2 December 31, 1993;~~[-]~~

3 (b) In the first taxable year beginning after December 31, 1993 and the three (3)
4 succeeding taxable years, if the transition amount exceeds one hundred
5 thousand dollars (\$100,000), or if the transition amount does not exceed one
6 hundred thousand dollars (\$100,000) and the taxpayer elects the provision of
7 this paragraph with the filing of the income tax return for the first taxable year
8 beginning after December 31, 1993, the taxpayer shall:

- 9 1. Deduct from gross income twenty-five percent (25%) of the transition
10 amount if the adjusted Kentucky basis of transition property exceeds the
11 adjusted federal basis of transition property; or
- 12 2. Add to gross income twenty-five percent (25%) of the transition amount
13 if the adjusted federal basis of transition property exceeds the adjusted
14 Kentucky basis of transition property; and~~[-]~~

15 (c) In the first taxable year beginning after December 31, 1993, if the transition
16 amount does not exceed one hundred thousand dollars (\$100,000) and the
17 taxpayer does not elect the provisions of paragraph (b) of this subsection, the
18 taxpayer shall:

- 19 1. Deduct from gross income the total transition amount if the adjusted
20 Kentucky basis of transition property exceeds the adjusted federal basis
21 of transition property; or
- 22 2. Add to gross income the total transition amount if the adjusted federal
23 basis of transition property exceeds the adjusted Kentucky basis of
24 transition property.

25 (15) Notwithstanding any other provision of this section to the contrary, any qualified
26 farming operation, as defined in KRS 141.410, shall be allowed to compute the
27 depreciation deduction for new buildings and equipment purchased to enable

1 participation in a networking project, as defined in KRS 141.410, on an accelerated
2 basis at two (2) times the rate that would otherwise be permitted under the
3 provisions of this section. The accumulated depreciation allowed under this
4 subsection shall not exceed the taxpayer's basis in such property.

5 (16) (a) For property placed in service after September 10, 2001, only the depreciation
6 deduction allowed under Section 168 of the Internal Revenue Code in effect
7 on December 31, 2001, exclusive of any amendments made subsequent to that
8 date, shall be allowed.

9 (b) For property placed in service after September 10, 2001, but prior to January
10 1, 2020, only the expense deduction allowed under Section 179 of the Internal
11 Revenue Code in effect on December 31, 2001, exclusive of any amendments
12 made subsequent to that date, shall be allowed.

13 (c) For property placed in service on or after January 1, 2020, ***but prior to***
14 ***January 1, 2023***, only the expense deduction allowed under Section 179 of
15 the Internal Revenue Code in effect on December 31, 2003, exclusive of any
16 amendments made subsequent to that date, shall be allowed, except that the
17 phase-out provisions of Section 179 of the Internal Revenue Code, limiting
18 the qualifying investment in property, shall not apply.

19 ***(d) For property placed in service on or after January 1, 2023, only the expense***
20 ***deduction allowed under Section 179 of the Internal Revenue Code in effect***
21 ***on December 31, 2022, exclusive of any amendments made subsequent to***
22 ***that date, shall be allowed, except that the phase-out provisions of Section***
23 ***179 of the Internal Revenue Code, limiting the qualifying investment in***
24 ***property, shall not apply.***