

1 AN ACT relating to the limited liability entity tax.

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

3 ➔Section 1. KRS 141.0401 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Kentucky gross receipts" means an amount equal to the computation of the
6 numerator of the apportionment fraction under KRS 141.120, any
7 administrative regulations related to the computation of the sales factor, and
8 KRS 141.121 and includes the proportionate share of Kentucky gross receipts
9 of all wholly or partially owned limited liability pass-through entities,
10 including all layers of a multi-layered pass-through structure;

11 (b) "Gross receipts from all sources" means an amount equal to the computation
12 of the denominator of the apportionment fraction under KRS 141.120, any
13 administrative regulations related to the computation of the sales factor, and
14 KRS 141.121 and includes the proportionate share of gross receipts from all
15 sources of all wholly or partially owned limited liability pass-through entities,
16 including all layers of a multi-layered pass-through structure;

17 (c) "Affiliated group" has the same meaning as in KRS 141.201;

18 (d) "Cost of goods sold" means:

19 1. Amounts that are:

20 a. Allowable as cost of goods sold pursuant to the Internal Revenue
21 Code and any guidelines issued by the Internal Revenue Service
22 relating to cost of goods sold, unless modified by this paragraph;
23 and

24 b. Incurred in acquiring or producing the tangible product generating
25 the Kentucky gross receipts.

26 2. For manufacturing, producing, reselling, retailing, or wholesaling
27 activities, cost of goods sold shall only include costs directly incurred in

- 1 acquiring or producing the tangible product. In determining cost of
2 goods sold:
- 3 a. Labor costs shall be limited to direct labor costs as defined in
4 paragraph (f) of this subsection;
- 5 b. Bulk delivery costs as defined in paragraph (g) of this subsection
6 may be included; and
- 7 c. Costs allowable under Section 263A of the Internal Revenue Code
8 may be included only to the extent the costs are incurred in
9 acquiring or producing the tangible product generating the
10 Kentucky gross receipts. Notwithstanding the foregoing, indirect
11 labor costs allowable under Section 263A shall not be included;
- 12 3. For any activity other than manufacturing, producing, reselling, retailing,
13 or wholesaling, no costs shall be included in cost of goods sold.

14 As used in this paragraph, "guidelines issued by the Internal Revenue Service"
15 includes regulations, private letter rulings, or any other guidance issued by the
16 Internal Revenue Service that may be relied upon by taxpayers under reliance
17 standards established by the Internal Revenue Service;

- 18 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
19 returns and allowances attributable to Kentucky gross receipts, less the
20 cost of goods sold attributable to Kentucky gross receipts. If the amount
21 of returns and allowances attributable to Kentucky gross receipts and the
22 cost of goods sold attributable to Kentucky gross receipts is zero, then
23 "Kentucky gross profits" means Kentucky gross receipts; and
- 24 2. "Gross profits from all sources" means gross receipts from all sources
25 reduced by returns and allowances attributable to gross receipts from all
26 sources, less the cost of goods sold attributable to gross receipts from all
27 sources. If the amount of returns and allowances attributable to gross

- 1 receipts from all sources and the cost of goods sold attributable to gross
2 receipts from all sources is zero, then gross profits from all sources
3 means gross receipts from all sources;
- 4 (f) "Direct labor" means labor that is incorporated into the tangible product sold
5 or is an integral part of the manufacturing process;
- 6 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
7 if:
- 8 1. The tangible product is delivered in bulk and requires specialized
9 equipment that generally precludes commercial shipping; and
 - 10 2. The tangible product is taxable under KRS 138.220;
- 11 (h) "Manufacturing" and "producing" means:
- 12 1. Manufacturing, producing, constructing, or assembling components to
13 produce a significantly different or enhanced end tangible product;
 - 14 2. Mining or severing natural resources from the earth; or
 - 15 3. Growing or raising agricultural or horticultural products or animals;
- 16 (i) "Real property" means land and anything growing on, attached to, or erected
17 on it, excluding anything that may be severed without injury to the land;
- 18 (j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
19 product;
- 20 (k) "Tangible personal property" means property, other than real property, that has
21 physical form and characteristics; and
- 22 (l) "Tangible product" means real property and tangible personal property;
- 23 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
24 liability entity tax shall be paid by every corporation and every limited liability
25 pass-through entity doing business in Kentucky on all Kentucky gross receipts
26 or Kentucky gross profits except as provided in this subsection. A small
27 business exclusion from this tax shall be provided based on the reduction

1 contained in this subsection. The tax shall be the greater of the amount
 2 computed under paragraph ~~(c)~~ of this subsection or one hundred seventy-
 3 five dollars (\$175), **except as provided in paragraph (b) of this section,**
 4 regardless of the application of any tax credits provided under this chapter or
 5 any other provisions of the Kentucky Revised Statutes for which the business
 6 entity may qualify.

7 **(b) For taxable years beginning on or after January 1, 2023, the limited**
 8 **liability entity tax shall not be assessed on a corporation or limited liability**
 9 **pass-through entity doing business in Kentucky if the corporation's or**
 10 **entity's Kentucky gross receipts are less than one hundred thousand dollars**
 11 **(\$100,000).**

12 ~~(c)~~ The limited liability entity tax shall be the lesser of subparagraph 1. or 2.
 13 of this paragraph:

14 1. a. If the corporation's or limited liability pass-through entity's gross
 15 receipts from all sources are three million dollars (\$3,000,000) or
 16 less, the limited liability entity tax shall be one hundred seventy-
 17 five dollars (\$175), **except as provided in paragraph (b) of this**
 18 **subsection;**

19 b. If the corporation's or limited liability pass-through entity's gross
 20 receipts from all sources are greater than three million dollars
 21 (\$3,000,000) but less than six million dollars (\$6,000,000), the
 22 limited liability entity tax shall be nine and one-half cents (\$0.095)
 23 per one hundred dollars (\$100) of the corporation's or limited
 24 liability pass-through entity's Kentucky gross receipts reduced by
 25 an amount equal to two thousand eight hundred fifty dollars
 26 (\$2,850) multiplied by a fraction, the numerator of which is six
 27 million dollars (\$6,000,000) less the amount of the corporation's or

- 1 limited liability pass-through entity's Kentucky gross receipts for
2 the taxable year, and the denominator of which is three million
3 dollars (\$3,000,000), but in no case shall the result be less than one
4 hundred seventy-five dollars (\$175);
- 5 c. If the corporation's or limited liability pass-through entity's gross
6 receipts from all sources are equal to or greater than six million
7 dollars (\$6,000,000), the limited liability entity tax shall be nine
8 and one-half cents (\$0.095) per one hundred dollars (\$100) of the
9 corporation's or limited liability pass-through entity's Kentucky
10 gross receipts.
- 11 2. a. If the corporation's or limited liability pass-through entity's gross
12 profits from all sources are three million dollars (\$3,000,000) or
13 less, the limited liability entity tax shall be one hundred seventy-
14 five dollars (\$175), except as provided in paragraph (b) of this
15 subsection;
- 16 b. If the corporation's or limited liability pass-through entity's gross
17 profits from all sources are at least three million dollars
18 (\$3,000,000) but less than six million dollars (\$6,000,000), the
19 limited liability entity tax shall be seventy-five cents (\$0.75) per
20 one hundred dollars (\$100) of the corporation's or limited liability
21 pass-through entity's Kentucky gross profits, reduced by an amount
22 equal to twenty-two thousand five hundred dollars (\$22,500)
23 multiplied by a fraction, the numerator of which is six million
24 dollars (\$6,000,000) less the amount of the corporation's or limited
25 liability pass-through entity's Kentucky gross profits, and the
26 denominator of which is three million dollars (\$3,000,000), but in
27 no case shall the result be less than one hundred seventy-five

1 dollars (\$175);

2 c. If the corporation's or limited liability pass-through entity's gross
3 profits from all sources are equal to or greater than six million
4 dollars (\$6,000,000), the limited liability entity tax shall be
5 seventy-five cents (\$0.75) per one hundred dollars (\$100) of all of
6 the corporation's or limited liability pass-through entity's Kentucky
7 gross profits.

8 In determining eligibility for the reductions contained in this paragraph, a
9 member of an affiliated group shall consider the total gross receipts and the
10 total gross profits from all sources of the entire affiliated group, including
11 eliminating entries for transactions among the group.

12 (c) A credit shall be allowed against the tax imposed under paragraph (a) of this
13 subsection for the current year to a corporation or limited liability pass-
14 through entity that owns an interest in a limited liability pass-through entity.
15 The credit shall be the proportionate share of tax calculated under this
16 subsection by the lower-level pass-through entity, as determined after the
17 amount of tax calculated by the pass-through entity has been reduced by the
18 minimum tax of one hundred seventy-five dollars (\$175). The credit shall
19 apply across multiple layers of a multi-layered pass-through entity structure.
20 The credit at each layer shall include the credit from each lower layer, after
21 reduction for the minimum tax of one hundred seventy-five dollars (\$175) at
22 each layer.

23 (d) The department may promulgate administrative regulations to establish a
24 method for calculating the cost of goods sold attributable to Kentucky.

25 (3) A nonrefundable credit based on the tax calculated under subsection (2) of this
26 section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The
27 credit amount shall be determined as follows:

- 1 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
2 shall be equal to the amount of tax calculated under subsection (2) of this
3 section for the current year after subtraction of any credits identified in KRS
4 141.0205, reduced by the minimum tax of one hundred seventy-five dollars
5 (\$175), plus any credit determined in paragraph (b) of this subsection for tax
6 paid by wholly or partially owned limited liability pass-through entities. The
7 amount of credit allowed to a corporation based on the amount of tax paid
8 under subsection (2) of this section for the current year shall be applied to the
9 income tax due from the corporation's activities in this state. Any remaining
10 credit from the corporation shall be disallowed.
- 11 (b) The credit allowed members, shareholders, or partners of a limited liability
12 pass-through entity shall be the members', shareholders', or partners'
13 proportionate share of the tax calculated under subsection (2) of this section
14 for the current year after subtraction of any credits identified in KRS
15 141.0205, as determined after the amount of tax paid has been reduced by the
16 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed
17 to members, shareholders, or partners of a limited liability pass-through entity
18 shall be applied to income tax assessed on income from the limited liability
19 pass-through entity. Any remaining credit from the limited liability pass-
20 through entity shall be disallowed.
- 21 (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms
22 prepared by the department, on or before the fifteenth day of the fourth month
23 following the close of the taxpayer's taxable year. Any tax remaining due after
24 making the payments required in KRS 141.044 shall be paid by the original due
25 date of the return.
- 26 (5) The department shall prescribe forms and promulgate administrative regulations as
27 needed to administer the provisions of this section.

- 1 (6) The tax imposed by subsection (2) of this section shall not apply to:
- 2 (a) For taxable years beginning prior to January 1, 2021:
- 3 1. Financial institutions, as defined in KRS 136.500, except banker's banks
- 4 organized under KRS 287.135 or 286.3-135;
- 5 2. Savings and loan associations organized under the laws of this state and
- 6 under the laws of the United States and making loans to members only;
- 7 3. Banks for cooperatives;
- 8 4. Production credit associations;
- 9 5. Insurance companies, including farmers' or other mutual hail, cyclone,
- 10 windstorm, or fire insurance companies, insurers, and reciprocal
- 11 underwriters;
- 12 6. Corporations or other entities exempt under Section 501 of the Internal
- 13 Revenue Code;
- 14 7. Religious, educational, charitable, or like corporations not organized or
- 15 conducted for pecuniary profit;
- 16 8. Corporations whose only owned or leased property located in this state
- 17 is located at the premises of a printer with which it has contracted for
- 18 printing, provided that:
- 19 a. The property consists of the final printed product, or copy from
- 20 which the printed product is produced; and
- 21 b. The corporation has no individuals receiving compensation in this
- 22 state as provided in KRS 141.901;
- 23 9. Public service corporations subject to tax under KRS 136.120;
- 24 10. Open-end registered investment companies organized under the laws of
- 25 this state and registered under the Investment Company Act of 1940;
- 26 11. Any property or facility which has been certified as a fluidized bed
- 27 energy production facility as defined in KRS 211.390;

- 1 12. An alcohol production facility as defined in KRS 247.910;
- 2 13. Real estate investment trusts as defined in Section 856 of the Internal
- 3 Revenue Code;
- 4 14. Regulated investment companies as defined in Section 851 of the
- 5 Internal Revenue Code;
- 6 15. Real estate mortgage investment conduits as defined in Section 860D of
- 7 the Internal Revenue Code;
- 8 16. Personal service corporations as defined in Section 269A(b)(1) of the
- 9 Internal Revenue Code;
- 10 17. Cooperatives described in Sections 521 and 1381 of the Internal
- 11 Revenue Code, including farmers' agricultural and other cooperatives
- 12 organized or recognized under KRS Chapter 272, advertising
- 13 cooperatives, purchasing cooperatives, homeowners associations
- 14 including those described in Section 528 of the Internal Revenue Code,
- 15 political organizations as defined in Section 527 of the Internal Revenue
- 16 Code, and rural electric and rural telephone cooperatives; or
- 17 18. Publicly traded partnerships as defined by Section 7704(b) of the
- 18 Internal Revenue Code that are treated as partnerships for federal tax
- 19 purposes under Section 7704(c) of the Internal Revenue Code, or their
- 20 publicly traded partnership affiliates. "Publicly traded partnership
- 21 affiliates" shall include any limited liability company or limited
- 22 partnership for which at least eighty percent (80%) of the limited
- 23 liability company member interests or limited partner interests are
- 24 owned directly or indirectly by the publicly traded partnership; and
- 25 (b) For taxable years beginning on or after January 1, 2021:
- 26 1. Insurance companies, including farmers' or other mutual hail, cyclone,
- 27 windstorm, or fire insurance companies, insurers, and reciprocal

- 1 underwriters;
- 2 2. Corporations or other entities exempt under Section 501 of the Internal
3 Revenue Code;
- 4 3. Religious, educational, charitable, or like corporations not organized or
5 conducted for pecuniary profit;
- 6 4. Corporations whose only owned or leased property located in this state
7 is located at the premises of a printer with which it has contracted for
8 printing, provided that:
- 9 a. The property consists of the final printed product, or copy from
10 which the printed product is produced; and
- 11 b. The corporation has no individuals receiving compensation in this
12 state as provided in KRS 141.901;
- 13 5. Public service corporations subject to tax under KRS 136.120;
- 14 6. Open-end registered investment companies organized under the laws of
15 this state and registered under the Investment Company Act of 1940;
- 16 7. Any property or facility which has been certified as a fluidized bed
17 energy production facility as defined in KRS 211.390;
- 18 8. An alcohol production facility as defined in KRS 247.910;
- 19 9. Real estate investment trusts as defined in Section 856 of the Internal
20 Revenue Code;
- 21 10. Regulated investment companies as defined in Section 851 of the
22 Internal Revenue Code;
- 23 11. Real estate mortgage investment conduits as defined in Section 860D of
24 the Internal Revenue Code;
- 25 12. Personal service corporations as defined in Section 269A(b)(1) of the
26 Internal Revenue Code;
- 27 13. Cooperatives described in Sections 521 and 1381 of the Internal

1 Revenue Code, including farmers' agricultural and other cooperatives
2 organized or recognized under KRS Chapter 272, advertising
3 cooperatives, purchasing cooperatives, homeowners associations
4 including those described in Section 528 of the Internal Revenue Code,
5 political organizations as defined in Section 527 of the Internal Revenue
6 Code, and rural electric and rural telephone cooperatives; or

7 14. Publicly traded partnerships as defined by Section 7704(b) of the
8 Internal Revenue Code that are treated as partnerships for federal tax
9 purposes under Section 7704(c) of the Internal Revenue Code, or their
10 publicly traded partnership affiliates. "Publicly traded partnership
11 affiliates" shall include any limited liability company or limited
12 partnership for which at least eighty percent (80%) of the limited
13 liability company member interests or limited partner interests are
14 owned directly or indirectly by the publicly traded partnership.

15 (7) (a) As used in this subsection, "qualified exempt organization" means an entity
16 listed in subsection (6)(a) and (b) of this section and shall not include any
17 entity whose exempt status has been disallowed by the Internal Revenue
18 Service.

19 (b) Notwithstanding any other provisions of this section, any limited liability
20 pass-through entity that is owned in whole or in part by a qualified exempt
21 organization shall, in calculating its Kentucky gross receipts or Kentucky
22 gross profits, exclude the proportionate share of its Kentucky gross receipts or
23 Kentucky gross profits attributable to the ownership interest of the qualified
24 exempt organization.

25 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts
26 or Kentucky gross profits in accordance with paragraph (b) of this subsection
27 shall disregard the ownership interest of the qualified exempt organization in

1 determining the amount of credit available under subsection (3) of this
2 section.

3 (d) The Department of Revenue may promulgate an administrative regulation to
4 further define "qualified exempt organization" to include an entity for which
5 exemption is constitutionally or legally required, or to exclude any entity
6 created primarily for tax avoidance purposes with no legitimate business
7 purpose.

8 (8) The credit permitted by subsection (3) of this section shall flow through multiple
9 layers of limited liability pass-through entities and shall be claimed by the taxpayer
10 who ultimately pays the tax on the income of the limited liability pass-through
11 entity.