

1 AN ACT relating to 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 1. ~~{a. —}~~ Allowable as cost of goods sold pursuant to the Internal Revenue
21 Code and any guidelines issued by the Internal Revenue Service relating
22 to cost of goods sold~~[-, unless modified by this paragraph]; and~~

23 2. ~~{b. —}~~ Incurred in acquiring or producing the tangible product generating
24 the Kentucky gross receipts.

25 ~~{2. — For manufacturing, producing, reselling, retailing, or wholesaling~~
26 ~~activities, cost of goods sold shall only include costs directly incurred in~~
27 ~~acquiring or producing the tangible product. In determining cost of~~

1 goods sold:

2 a. ~~Labor costs shall be limited to direct labor costs as defined in~~
3 ~~paragraph (f) of this subsection;~~

4 b. ~~Bulk delivery costs as defined in paragraph (g) of this subsection~~
5 ~~may be included; and~~

6 c. ~~Costs allowable under Section 263A of the Internal Revenue Code~~
7 ~~may be included only to the extent the costs are incurred in~~
8 ~~acquiring or producing the tangible product generating the~~
9 ~~Kentucky gross receipts. Notwithstanding the foregoing, indirect~~
10 ~~labor costs allowable under Section 263A shall not be included;~~

11 3. ~~For any activity other than manufacturing, producing, reselling, retailing,~~
12 ~~or wholesaling, no costs shall be included in cost of goods sold.]~~

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

17 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
18 returns and allowances attributable to Kentucky gross receipts, less the
19 cost of goods sold attributable to Kentucky gross receipts. If the amount
20 of returns and allowances attributable to Kentucky gross receipts and the
21 cost of goods sold attributable to Kentucky gross receipts is zero, then
22 "Kentucky gross profits" means Kentucky gross receipts; and

23 2. "Gross profits from all sources" means gross receipts from all sources
24 reduced by returns and allowances attributable to gross receipts from all
25 sources, less the cost of goods sold attributable to gross receipts from all
26 sources. If the amount of returns and allowances attributable to gross
27 receipts from all sources and the cost of goods sold attributable to gross

1 receipts from all sources is zero, then gross profits from all sources
2 means gross receipts from all sources.}]

3 ~~(f) "Direct labor" means labor that is incorporated into the tangible product sold
4 or is an integral part of the manufacturing process;~~

5 ~~(g) "Bulk delivery costs" means the cost of delivering the product to the consumer
6 if:~~

7 ~~1. The tangible product is delivered in bulk and requires specialized equipment
8 that generally precludes commercial shipping; and~~

9 ~~2. The tangible product is taxable under KRS 138.220;~~

10 ~~(h) "Manufacturing" and "producing" means:~~

11 ~~1. Manufacturing, producing, constructing, or assembling components to
12 produce a significantly different or enhanced end tangible product;~~

13 ~~2. Mining or severing natural resources from the earth; or~~

14 ~~3. Growing or raising agricultural or horticultural products or animals;~~

15 ~~(i) "Real property" means land and anything growing on, attached to, or erected
16 on it, excluding anything that may be severed without injury to the land;~~

17 ~~(j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
18 product;~~

19 ~~(k) "Tangible personal property" means property, other than real property, that has
20 physical form and characteristics; and~~

21 ~~(l) "Tangible product" means real property and tangible personal property;]~~

22 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
23 liability entity tax shall be paid by every corporation and every limited liability
24 pass-through entity doing business in Kentucky on all Kentucky gross receipts
25 or Kentucky gross profits except as provided in this subsection. A small
26 business exclusion from this tax shall be provided based on the reduction
27 contained in this subsection. The tax shall be the greater of the amount

1 computed under paragraph (b) of this subsection or one hundred seventy-five
2 dollars (\$175), regardless of the application of any tax credits provided under
3 this chapter or any other provisions of the Kentucky Revised Statutes for
4 which the business entity may qualify.

5 (b) The limited liability entity tax shall be the lesser of subparagraph 1. or 2. of
6 this paragraph:

7 1. a. If the corporation's or limited liability pass-through entity's gross
8 receipts from all sources are three million dollars (\$3,000,000) or
9 less, the limited liability entity tax shall be one hundred seventy-
10 five dollars (\$175);

11 b. If the corporation's or limited liability pass-through entity's gross
12 receipts from all sources are greater than three million dollars
13 (\$3,000,000) but less than six million dollars (\$6,000,000), the
14 limited liability entity tax shall be nine and one-half cents (\$0.095)
15 per one hundred dollars (\$100) of the corporation's or limited
16 liability pass-through entity's Kentucky gross receipts reduced by
17 an amount equal to two thousand eight hundred fifty dollars
18 (\$2,850) multiplied by a fraction, the numerator of which is six
19 million dollars (\$6,000,000) less the amount of the corporation's or
20 limited liability pass-through entity's Kentucky gross receipts for
21 the taxable year, and the denominator of which is three million
22 dollars (\$3,000,000), but in no case shall the result be less than one
23 hundred seventy-five dollars (\$175);

24 c. If the corporation's or limited liability pass-through entity's gross
25 receipts from all sources are equal to or greater than six million
26 dollars (\$6,000,000), the limited liability entity tax shall be nine
27 and one-half cents (\$0.095) per one hundred dollars (\$100) of the

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

26 In determining eligibility for the reductions contained in this paragraph, a
27 member of an affiliated group shall consider the total gross receipts and the

1 total gross profits from all sources of the entire affiliated group, including
2 eliminating entries for transactions among the group.

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

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

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

19 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
20 shall be equal to the amount of tax calculated under subsection (2) of this
21 section for the current year after subtraction of any credits identified in KRS
22 141.0205, reduced by the minimum tax of one hundred seventy-five dollars
23 (\$175), plus any credit determined in paragraph (b) of this subsection for tax
24 paid by wholly or partially owned limited liability pass-through entities. The
25 amount of credit allowed to a corporation based on the amount of tax paid
26 under subsection (2) of this section for the current year shall be applied to the
27 income tax due from the corporation's activities in this state. Any remaining

1 credit from the corporation shall be disallowed.

2 (b) The credit allowed members, shareholders, or partners of a limited liability
3 pass-through entity shall be the members', shareholders', or partners'
4 proportionate share of the tax calculated under subsection (2) of this section
5 for the current year after subtraction of any credits identified in KRS
6 141.0205, as determined after the amount of tax paid has been reduced by the
7 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed
8 to members, shareholders, or partners of a limited liability pass-through entity
9 shall be applied to income tax assessed on income from the limited liability
10 pass-through entity. Any remaining credit from the limited liability pass-
11 through entity shall be disallowed.

12 (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms
13 prepared by the department, on or before the fifteenth day of the fourth month
14 following the close of the taxpayer's taxable year. Any tax remaining due after
15 making the payments required in KRS 141.044 shall be paid by the original due
16 date of the return.

17 (5) The department shall prescribe forms and promulgate administrative regulations as
18 needed to administer the provisions of this section.

19 (6) The tax imposed by subsection (2) of this section shall not apply to:

20 (a) For taxable years beginning prior to January 1, 2021:

- 21 1. Financial institutions, as defined in KRS 136.500, except banker's banks
22 organized under KRS 287.135 or 286.3-135;
- 23 2. Savings and loan associations organized under the laws of this state and
24 under the laws of the United States and making loans to members only;
- 25 3. Banks for cooperatives;
- 26 4. Production credit associations;
- 27 5. Insurance companies, including farmers' or other mutual hail, cyclone,

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

- 1 17. Cooperatives described in Sections 521 and 1381 of the Internal
2 Revenue Code, including farmers' agricultural and other cooperatives
3 organized or recognized under KRS Chapter 272, advertising
4 cooperatives, purchasing cooperatives, homeowners associations
5 including those described in Section 528 of the Internal Revenue Code,
6 political organizations as defined in Section 527 of the Internal Revenue
7 Code, and rural electric and rural telephone cooperatives; or
- 8 18. Publicly traded partnerships as defined by Section 7704(b) of the
9 Internal Revenue Code that are treated as partnerships for federal tax
10 purposes under Section 7704(c) of the Internal Revenue Code, or their
11 publicly traded partnership affiliates. "Publicly traded partnership
12 affiliates" shall include any limited liability company or limited
13 partnership for which at least eighty percent (80%) of the limited
14 liability company member interests or limited partner interests are
15 owned directly or indirectly by the publicly traded partnership; and
- 16 (b) For taxable years beginning on or after January 1, 2021:
- 17 1. Insurance companies, including farmers' or other mutual hail, cyclone,
18 windstorm, or fire insurance companies, insurers, and reciprocal
19 underwriters;
- 20 2. Corporations or other entities exempt under Section 501 of the Internal
21 Revenue Code;
- 22 3. Religious, educational, charitable, or like corporations not organized or
23 conducted for pecuniary profit;
- 24 4. Corporations whose only owned or leased property located in this state
25 is located at the premises of a printer with which it has contracted for
26 printing, provided that:
- 27 a. The property consists of the final printed product, or copy from

- 1 which the printed product is produced; and
- 2 b. The corporation has no individuals receiving compensation in this
- 3 state as provided in KRS 141.901;
- 4 5. Public service corporations subject to tax under KRS 136.120;
- 5 6. Open-end registered investment companies organized under the laws of
- 6 this state and registered under the Investment Company Act of 1940;
- 7 7. Any property or facility which has been certified as a fluidized bed
- 8 energy production facility as defined in KRS 211.390;
- 9 8. An alcohol production facility as defined in KRS 247.910;
- 10 9. Real estate investment trusts as defined in Section 856 of the Internal
- 11 Revenue Code;
- 12 10. Regulated investment companies as defined in Section 851 of the
- 13 Internal Revenue Code;
- 14 11. Real estate mortgage investment conduits as defined in Section 860D of
- 15 the Internal Revenue Code;
- 16 12. Personal service corporations as defined in Section 269A(b)(1) of the
- 17 Internal Revenue Code;
- 18 13. Cooperatives described in Sections 521 and 1381 of the Internal
- 19 Revenue Code, including farmers' agricultural and other cooperatives
- 20 organized or recognized under KRS Chapter 272, advertising
- 21 cooperatives, purchasing cooperatives, homeowners associations
- 22 including those described in Section 528 of the Internal Revenue Code,
- 23 political organizations as defined in Section 527 of the Internal Revenue
- 24 Code, and rural electric and rural telephone cooperatives; or
- 25 14. Publicly traded partnerships as defined by Section 7704(b) of the
- 26 Internal Revenue Code that are treated as partnerships for federal tax
- 27 purposes under Section 7704(c) of the Internal Revenue Code, or their

1 publicly traded partnership affiliates. "Publicly traded partnership
2 affiliates" shall include any limited liability company or limited
3 partnership for which at least eighty percent (80%) of the limited
4 liability company member interests or limited partner interests are
5 owned directly or indirectly by the publicly traded partnership.

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

10 (b) Notwithstanding any other provisions of this section, any limited liability
11 pass-through entity that is owned in whole or in part by a qualified exempt
12 organization shall, in calculating its Kentucky gross receipts or Kentucky
13 gross profits, exclude the proportionate share of its Kentucky gross receipts or
14 Kentucky gross profits attributable to the ownership interest of the qualified
15 exempt organization.

16 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts
17 or Kentucky gross profits in accordance with paragraph (b) of this subsection
18 shall disregard the ownership interest of the qualified exempt organization in
19 determining the amount of credit available under subsection (3) of this
20 section.

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

26 (8) The credit permitted by subsection (3) of this section shall flow through multiple
27 layers of limited liability pass-through entities and shall be claimed by the taxpayer

1 who ultimately pays the tax on the income of the limited liability pass-through
2 entity.