

**139.505 Refundable credit of portion of sales tax paid on interstate business communications service.**

- (1) For the purpose of this section, "gross receipts" means:
  - (a) Sales of tangible personal property in this state if:
    1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of the sale; or
    2. The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government; and
  - (b) Sales other than sales of tangible personal property in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on cost of performance, or gross receipt allocation method as provided by statute and elected by the taxpayer.
- (2) Any business whose interstate communications service, subject to the sales tax imposed under KRS Chapter 139 and deducted for federal income tax purposes, exceeds five percent (5%) of the business's Kentucky gross receipts during the preceding calendar year is entitled to a refundable credit if:
  - (a) The business's annual Kentucky gross receipts are equal to or more than one million dollars (\$1,000,000); and
  - (b) The majority of the interstate communications service billed to a Kentucky service address for the annual period is for communications service originating outside of this state and terminating in this state.
- (3) The refundable credit shall be equal to the sales tax paid on the difference by which the interstate communications service purchased by the business exceeds five percent (5%) of the business's Kentucky gross receipts.
- (4) Any business that qualifies for the refundable credit authorized by subsection (2) of this section shall make an annual application for the refund on or after June 1, 2002, and on or after every June 1 thereafter. The application shall be made to the department on forms as the department may prescribe and shall contain information regarding interstate communications service purchases and any other information deemed necessary for the department to determine the business's eligibility to receive a refund.
- (5) Notwithstanding the provisions of KRS 134.580 to the contrary, the department, upon receipt of a properly documented refund application, shall cause a timely refund to be made directly to the eligible business. Interest shall not be allowed or paid on any refund made under this section.
- (6) To facilitate the administration of the refundable tax credit, the department shall grant eligible businesses that apply for the tax credit permission to directly report and pay the sales tax applicable to the purchase of communications service. Once the business receives permission to directly report and pay the tax, refunds issued

according to subsection (2) of this section shall not include any sales tax collected and paid by a communications service provider.

- (7) Any refund application submitted under this section is subject to examination by the department. The examination shall occur within four (4) years from the date the refund application is received by the department. Any overpayment resulting from the examination shall be repaid to the State Treasury. In addition, the amount required to be repaid is subject to the interest provisions of KRS 131.183 and to the penalty provisions of KRS 131.180.
- (8) If a business owns directly or indirectly fifty percent (50%) or more of another business, the credit computed under subsection (2) of this section shall be computed on a combined basis, excluding any intercompany Kentucky gross receipts.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 421, effective June 20, 2005; ch. 168, sec. 127, effective June 1, 2005; and ch. 173, Pt. XVI, sec. 4, effective March 20, 2005. -- Created 2000 Ky. Acts ch. 547, sec. 8, effective January 1, 2001.

**Legislative Research Commission Note (3/20/2005).** This section was amended by 2005 Ky. Acts chs. 85, 168 and 173, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (3/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**Legislative Research Commission Note (3/20/2005).** 2005 Ky. Acts ch. 173, Part XVI, sec. 7, provides that the amendments made to this section in Section 4 of that Part (and coincidentally in 2005 Ky. Acts ch. 168, sec. 127), relating to the sales tax on communication services, shall apply to applicants filing on or after June 1, 2003.