

### **136.070 Corporation license tax -- Exemptions -- Apportionment -- Credit.**

- (1) Every corporation organized under the laws of this state, every corporation having its commercial domicile in this state, and every foreign corporation owning or leasing property located in this state or having one (1) or more individuals receiving compensation in this state, except financial institutions as defined in KRS 136.500, savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only, open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940, production credit associations, insurance companies, including farmers' or other mutual hail, cyclone, windstorm or fire insurance companies, insurers and reciprocal underwriters, public service companies subject to taxation under KRS 136.120, those corporations exempted by Section 501 of the Internal Revenue Code, any property or facility which has been certified as an alcohol production facility as defined in KRS 247.910, any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390, and any other religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit, shall pay to the state an annual license tax of two dollars and ten cents (\$2.10) on each one thousand dollars (\$1,000) of the capital employed in the business as computed under the provisions of subsections (2) and (3) of this section, subject to the credit provided in subsection (6) of this section.
- (2)
  - (a) The term "capital" as used in this section means capital stock, surplus, advances by affiliated companies, intercompany accounts, borrowed moneys or any other accounts representing additional capital used and employed in the business. Accounts properly defined as "capital" in this section shall be reported at the value reflected on financial statements prepared for book purposes as of the last day of the calendar or fiscal year;
  - (b) "Capital employed," in the case of corporations having property or payroll only in this state, means "capital" as defined above;
  - (c) "Capital employed," in the case of corporations having property or payroll both within and without this state means "capital" as defined above and as apportioned under subsection (3) of this section;
  - (d) Property means either real property or tangible personal property which is either owned or leased. Payroll means compensation, paid to one (1) or more individuals, as described in subsection (3) of this section. Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction.
- (3) The total capital, as determined under subsection (2) of this section, shall be apportioned as follows:
  - (a) The total capital shall be multiplied by a fraction, the numerator of which is the property factor plus the payroll factor, plus the sales factor, and the denominator of which is three (3); provided, however, that effective with taxable years beginning after July 31, 1985, in lieu of the equally weighted

three (3) factor apportionment fraction based on property, payroll, and sales, an apportionment fraction composed of a sales factor representing fifty percent (50%) of the fraction, a property factor representing twenty-five percent (25%) of the fraction, and a payroll factor representing twenty-five percent (25%) of the fraction shall be used;

- (b) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period; provided, however, that property which has been certified as a pollution control facility as defined in KRS 224.1-300 shall be excluded from the property factor:
  - 1. Property owned by the taxpayer is valued at its original cost. If the original cost of any property is not determinable or is nominal or zero, such property shall be valued by the department under regulations promulgated by the department. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals, provided that such rental and such subrentals are reasonable. If the department determines that the annual rental or subrental rate is unreasonable, or if nominal or zero rate is charged, the department may determine and apply such rental rate as will reasonably reflect the value of the property rented by the taxpayer; and
  - 2. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;
- (c) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid or payable everywhere during the tax period. Compensation is paid or payable in this state if:
  - 1. The individual's service is performed entirely within the state;
  - 2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
  - 3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state;

- (d) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. Sales of tangible personal property are 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;
  - 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; or
  - 3. Sales, other than sales of tangible personal property, are 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 costs of performance.
- (4) If the apportionment provisions of this section do not fairly measure the taxpayer's capital in this state, the taxpayer may petition for or the department may require:
  - (a) The exclusion of any one (1) or more of the factors;
  - (b) The inclusion of one (1) or more additional factors which will fairly measure the taxpayer's capital in this state; or
  - (c) The employment of any other method to produce an equitable apportionment of the taxpayer's capital.
- (5) No corporation required to pay an annual license tax under this section shall pay less than thirty dollars (\$30).
- (6) Every corporation with a gross income of not more than five hundred thousand dollars (\$500,000) shall be entitled to a credit equivalent to one dollar and forty cents (\$1.40) per one thousand dollars (\$1,000) of the initial three hundred and fifty thousand dollars (\$350,000) of capital employed in the business, as computed under the provisions of KRS 136.070(2) and (3).

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 295, effective June 20, 2005. -- Amended 1996 Ky. Acts ch. 254, sec. 31, effective July 15, 1996. -- Amended 1986 Ky. Acts ch. 476, sec. 4, effective July 15, 1986. -- Amended 1985 (1st Extra. Sess.) Ky. Acts ch. 6, Pt. III, sec. 3, effective July 29, 1985. -- Amended 1980 Ky. Acts ch. 181, sec. 1, effective July 15, 1980; and ch. 210, sec. 5, effective July 15, 1980. -- Amended 1976 Ky. Acts ch. 155, sec. 5. -- Amended 1974 Ky. Acts ch. 137, sec. 3. -- Amended 1972 Ky. Acts ch. 84, Pt. II, sec. 1. -- Amended 1970 Ky. Acts ch. 14, sec. 4. -- Amended 1966 Ky. Acts ch. 187, Part II, sec. 1; and ch. 255, sec. 129. -- Amended 1962 Ky. Acts ch. 94, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4189-1, 4189-2, 4189-8.

**Legislative Research Commission Note.** 1985 Acts Ex. Sess., ch. 6, Part II, Section 5, directs that the provisions of this section shall apply to taxable years ending after 7/31/85.