

**139.534 Tax refund for purchases and operation of certain communications and computer systems costing \$100 million or more.**

- (1) As used in this section:
- (a) "Approved company" means an eligible company that has received preliminary approval from the department for a sales and use tax refund under this section;
  - (b) "Communications system" means a system composed of equipment used to provide communications services as defined in KRS 139.195. "Communications system" does not include repair, replacement, or spare parts as defined in KRS 139.010, installation materials, operating supplies, office supplies, or supplies to maintain the system;
  - (c) "Computer software" means a set of coded instructions designed to cause a computer or automatic processing equipment to perform a task;
  - (d) "Computer system" means a system composed of personal computers, laptops, computer software, computer servers, processors, coprocessors, memory devices, storage devices, input and output devices, and other similar devices deployed as part of the system configuration. "Computer system" does not include repair, replacement, or spare parts as defined in KRS 139.010, installation materials, operating supplies, office supplies, or supplies to maintain the system;
  - (e) "Eligible company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity that is classified under the following 2007 North American Industry Classification System (NAICS) industry codes, including any subsequent updates or revisions thereto:
    - 1. NAICS 511210, Software publishers;
    - 2. NAICS 518210, Data processing, hosting, and related services;
    - 3. NAICS 519130, Internet publishing, broadcasting, and web search portal business; or
    - 4. NAICS 541511, Custom computer programming services; and
  - (f) "Qualifying system" means:
    - 1. A communications system;
    - 2. A computer system; or
    - 3. A combination thereof;that is subject to depreciation under Section 167 or 168 of the Internal Revenue Code, including assets expensed under Section 179 of the Internal Revenue Code.
- (2) Notwithstanding KRS 134.580(3) and 139.770, an approved company may qualify for a refund of up to one hundred percent (100%) of the Kentucky sales and use tax paid, reduced by the amount of vendor compensation allowed under KRS 139.570, on the purchase of a qualifying system.

- (3) To qualify for the refund provided in subsection (2) of this section, all of the following requirements shall be met:
  - (a) The eligible company shall file an application for preliminary approval with the department prior to making the purchase;
  - (b) Upon receiving preliminary approval, the approved company shall purchase the qualifying system on or after July 1, 2010, and shall spend one hundred million dollars (\$100,000,000) or more on the purchase or purchases, excluding tax;
  - (c) The qualifying system shall be installed at a single location in the Commonwealth within eighteen (18) months from the date the department preliminarily approves the eligible company for a sales and use tax refund as provided in subsection (5) of this section; and
  - (d) The approved company shall use the qualifying system:
    1. At the specified location until the property is fully depreciated or, if the approved company elects to expense the property under Section 179 of the Internal Revenue Code, the property shall be operated at the Kentucky location for the same time as if the property were depreciated under Section 167 or 168 of the Internal Revenue Code; and
    2. In the business activities that are included within the NAICS industry codes listed in subsection (1)(e) of this section.
- (4) The eligible company shall file an application for preliminary approval with the department prior to purchasing the qualifying system. The application shall be in the form prescribed by the department and shall include:
  - (a) The name and address of the eligible company;
  - (b) A description of the eligible company's business activities and applicable NAICS code;
  - (c) A description of the qualifying system and an explanation of how the components thereof will be used by the eligible company in its business activities;
  - (d) The estimated cost of the system;
  - (e) The business location where the system will be located;
  - (f) The date of anticipated purchase;
  - (g) The anticipated installation completion date; and
  - (h) Any other information the department may require.
- (5) The department shall notify the eligible company that the application for preliminary approval has been approved or denied.
- (6)
  - (a) To be eligible to receive a full refund, the approved company shall file a request for a sales and use tax refund within sixty (60) days following the completed installation of qualifying system.
  - (b) Failure to file a refund request within sixty (60) days shall result in an adjustment to the refund amount paid as follows:

1. For late refund requests filed on or after the sixty-first day and prior to the one hundred eighty-first day after the completed installation, for each thirty (30) days, or portion thereof, that the refund request is late, the refund amount shall be reduced by one-twelfth (1/12) of the total amount determined by the department; and
  2. Any refund request filed more than one hundred eighty (180) days after the completed installation shall be rejected, and no refunds shall be paid for the time period covered by the request.
- (7) Interest shall not be allowed or paid on any sales and use tax refund made under this section.
- (8) (a) If the approved company does not operate the qualifying system at the business location where the system was initially installed for the time period required under subsection (3)(d)1. of this section, or in the manner required under subsection (3)(d)2. of this section, the approved company shall notify the department that the requirements of subsection (3) of this section have not been met. The approved company shall repay the previously received sales and use tax refunds plus interest at the rate established in KRS 131.183 computed from the date the refund was issued.
- (b) If the approved company fails to pay the tax and interest within thirty (30) days of the notification, the department shall apply all applicable penalties provided in KRS 131.180.

**Effective:** June 26, 2009

**History:** Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 35, effective June 26, 2009.