

96.820 Payment of sums equivalent to taxes based on book value.

- (1) For the purposes of this section, unless the context requires otherwise:
- (a) "Taxing jurisdiction" shall mean each county, each school district, each municipality, and each other special taxing district located within the state.
 - (b) "State" shall mean the Commonwealth of Kentucky.
 - (c) "Tax equivalent" shall mean the amount in lieu of taxes computed according to this section which is required to be paid by each board to the state and to each taxing jurisdiction in which the board operates and required by subsection (11) of KRS 96.570 to be included in resale rates.
 - (d) "Tax year" shall mean the twelve (12) calendar-month period ending with December 31.
 - (e) "Current tax rate" shall mean the actual levied ad valorem property tax rate of the state and of each taxing jurisdiction which is applicable to all property of the same class as a board's property subject to taxation for the tax year involved.
 - (f) "Book value of property" or "book value of property owned by the board" shall mean the sum of:
 - 1. The original cost (less reasonable depreciation or retirement reserve) of a board's electric plant in service on December 31 of the immediately preceding calendar year located within the state, used and held for use in the transmission, distribution, and generation of electric energy, and
 - 2. The cost of the material and supplies owned by a board on December 31 of the immediately preceding calendar year. For the purpose of this definition, "electric plant in service" shall mean those items included in the "electric plant in service" account prescribed by the Federal Energy Regulatory Commission uniform system of accounts for electric utilities, and "material and supplies" shall mean those items included in the accounts grouped under the heading "material and supplies" in the said system of accounts.
 - (g) "Adjusted book value of property" or "adjusted book value of property owned by the board" shall mean the book value of property owned by the board excluding manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination purposes.
 - (h) The "adjustment factor" shall be one hundred twenty-five percent (125%) for the tax year 1970. For each tax year thereafter, it shall be the duty of the Department of Revenue to compute the adjustment factor for that tax year as follows: For each five (5) percentage points or major fraction thereof by which the adjustment ratio for electric utility property for the immediately preceding tax year exceeded or was less than one hundred sixteen percent (116%), five (5) percentage points shall be added to or subtracted from one hundred twenty-five percent (125%). For the purposes of this computation, "adjustment ratio for electric utility property" shall mean the ratio of total assessed value to total property value for all public service corporations

distributing electric energy to more than fifty thousand (50,000) retail electric customers within the state. "Total assessed value" shall mean the total actual cash value assigned by the Department of Revenue for ad valorem property tax purposes to the property of such corporations located within the state (properly adjusted for property under construction). "Total property value" shall mean the sum of:

1. The depreciated original cost of the total utility plant in service of such corporations within the state, and
 2. The book value of material and supplies of such corporations located within the state, both as derived from published reports of the Federal Energy Regulatory Commission, or in the absence thereof, from information provided to the Department of Revenue by such corporations.
- (i) "Electric operations" shall mean all activities associated with the establishment, development, administration, and operation of any electric system and the supplying of electric energy and associated services to the public, including without limitation the generation, purchase, sale, and resale of electric energy and the purchase, use, and consumption thereof by ultimate consumers.
- (2) It shall be the duty of each board, on or before April 30, to certify to the Department of Revenue the book value of property owned by the board and the adjusted book value of property owned by the board and located within the state and within each taxing jurisdiction in which the board operates. A copy of the certification shall also be sent by the board to each such taxing jurisdiction. The book value of property and adjusted book value of property shall be determined, and the books and records of the board shall be kept in accordance with standard accounting practices, and the books and records of each board shall be subject to inspection by the Department of Revenue and by representatives of the affected taxing jurisdictions and to adjustment by the Department of Revenue if found not to comply with the provisions of this section. Upon the receipt of the required certification from a board, the Department of Revenue shall make any inspection and adjustment, hereinabove authorized, as it deems necessary, and no earlier than September 1 of each year the Department of Revenue shall certify to the board and to the county clerk of each county in which the board operates the book value of property owned by the board and the adjusted book value of property owned by the board, located within each taxing jurisdiction in which the board operates and within the state. At the same time, the Department of Revenue shall certify to the board and to the county clerk the adjustment factor for the tax year. The county clerk shall promptly certify the book value of property, the adjusted book value of property, and the adjustment factor certified by the Department of Revenue, to the respective taxing jurisdiction in which the board operates.
- (3) (a) Each board shall pay for each tax year, beginning with the tax year 1970, to the state and to each taxing jurisdiction in which the board operates, a tax

equivalent from the revenues derived from the board's electric operations for that tax year, computed according to this subsection.

- (b) The tax equivalent for each tax year payable to the state shall be the total of:
 - 1. The book value of the property owned by the board within the state, multiplied by the adjustment factor, multiplied by the current tax rate of the state, less thirty cents (\$0.30), plus
 - 2. The state's portion of the amount payable under paragraph (d) of this subsection.
- (c) The tax equivalent for each tax year payable to each taxing jurisdiction in which the board operates shall be the total of:
 - 1. The adjusted book value of property owned by the board within the taxing jurisdiction, multiplied by the adjustment factor, multiplied by the current tax rate of the taxing jurisdiction; provided, however, for the purpose of this calculation the tax rate for school districts shall be increased by thirty cents (\$0.30), plus
 - 2. The taxing jurisdiction's portion of the amount payable under paragraph (d) of this subsection.
- (d) For purposes of this subsection, "amount payable" shall mean four-tenths of one percent (0.4%) of the book value of property owned by the board located within the state. The state shall be paid the same proportion of the amount payable as the payment to the state under subparagraph 1. of paragraph (b) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Each taxing jurisdiction in which the board operates shall be paid the same proportion of the amount payable as the payment to the taxing jurisdiction under subparagraph 1. of paragraph (c) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Under the regulations the Department of Revenue may prescribe, upon the board's receipt from the state and taxing jurisdictions of notice of the amount due under subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection, the board shall compute the portion of the amount payable which is due the state and each taxing jurisdiction in which the board operates.
- (e) Payment of the tax equivalent under this section for each tax year shall be made by each board to the state within thirty (30) days after receipt by the board of the certification from the Department of Revenue required by subsection (2) of this section and shall be made directly to each taxing jurisdiction in which the board operates within thirty (30) days from the date of the certifications by the county clerk required by subsection (2) of this section. The state and each taxing jurisdiction in which a board operates shall have a superior lien upon the proceeds of the sale of electric energy by that board for the amounts required by this section to be paid to it.

- (4) Except as hereinafter provided, the tax equivalents computed under this section shall be in lieu of all state, municipal, county, school district, special taxing district, other taxing district, and other state and local taxes or charges on the tangible and intangible property, the income, franchises, rights, and resources of every kind and description of any municipal electric system operating under KRS 96.550 to 96.900 and on the electric operations of any board established pursuant thereto, and the tax equivalent for any tax year computed and payable under this section to the state or to any taxing jurisdiction in which any board operates shall be reduced by the aggregate amount of any tax or charge within the meaning of this sentence which is imposed by the state, or by any taxing jurisdiction in which a board operates, on the board, the electric system, or the board's electric operations. Provided, however, that if any school district in which property of a board is located has elected, or does hereafter elect, to apply the utility gross receipts license tax for schools to all utility services as provided by KRS 160.613 through KRS 160.617, or as may hereafter be provided by other statutes, the amount of such utility gross receipts license tax shall not reduce, or in any manner affect, the amount payable to any such board or boards under the provisions of this section. It is the intent and purpose of this provision to eliminate all sums received by any such board or boards by reason of the utility gross receipts license tax from any computation of the amount payable under this section to any such board or boards, irrespective of the manner in which that payment is computed, so that, in no event, shall any sum received by any school district by reason of the utility gross receipts license tax reduce, directly or indirectly, the amount payable to such district under this chapter. Provided, further, that if the state shall levy a statewide retail sales or use tax on electric power or energy, collected by retailers of the energy from the vendees or users thereof, and imposed at the same rate or rates as are generally applicable to the sale or use of personal property or services, including natural or artificial gas, fuel oil, and coal as well as electric power or energy, the retail sales or use tax shall not be deemed to be a tax or charge within the meaning of the first sentence of this subsection, and the tax equivalent payable for the tax year to the state under this section shall not be reduced on account of such retail sales or use tax.
- (5) (a) Notwithstanding subsection (3) of this section, until the first tax year in which the total of:
1. The tax equivalent payable to the state, or to any taxing jurisdiction in which the board operates, computed under subsection (3) of this section, plus
 2. The additional amounts permitted to be paid to the state or taxing jurisdiction without deduction under the second and third sentences of subsection (4) of this section, exceeds the minimum payment to the state or taxing jurisdiction specified in paragraph (b) of this subsection, the tax equivalent for each tax year payable to the state or taxing jurisdiction shall be an amount equal to the minimum payment computed under paragraph (b) of this subsection.

- (b) For purposes of this subsection, the minimum payment to the state or to any taxing jurisdiction in which the board operates shall mean an amount equal to the total of:
1. The largest actual payment made by the board pursuant to this section to the state or to the taxing jurisdiction for any of the tax years 1964, 1965, or 1966, plus
 2. The state's or taxing jurisdiction's pro rata share of an amount equal to four-tenths of one percent (0.4%) of the increase since July 1, 1964, in the book value of property owned by the board within the state. For the purposes of this paragraph "pro rata share" shall mean the same proportion of the amount computed under this subparagraph as the largest actual payment in lieu of taxes made by the board to the state or taxing jurisdiction for the applicable tax year under subparagraph 1. of this paragraph represents of the total amount of the largest actual payments in lieu of taxes made by the board to the state and to all taxing jurisdictions in which it operated for any of the applicable tax years.
- (c) The provisions of paragraph (e) of subsection (3) of this section shall apply to all payments required under this subsection.
- (d) This subsection shall not be applicable for the first tax year specified in paragraph (a) of this subsection or for any tax year thereafter, except however, that tax year 1977 shall not be deemed as the "first tax year" as specified in paragraph (a) and this subsection shall continue to apply in such cases.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 85, sec. 103, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 89, sec. 2, effective July 15, 2002. -- Amended 1990 Ky. Acts ch. 476, Pt. IV, sec. 124, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 163, sec. 1, effective June 17, 1978; and ch. 384, sec. 223, effective June 17, 1978. -- Amended 1972 Ky. Acts ch. 219, sec. 1. -- Amended 1970 Ky. Acts ch. 286, sec. 2. - - Amended 1968 Ky. Acts ch. 170, sec. 1. -- Amended 1966 Ky. Acts ch. 165, sec. 2. -- Created 1942 Ky. Acts ch. 18, sec. 25.